

Message

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**From:** Campbell, Ann [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B8C25A0C2FB648B6A947694A8492311E-CAMPBELL, ANN]  
**Sent:** 5/18/2018 11:08:47 AM  
**To:** Best-Wong, Benita [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6ee79b3d0fc0429b99f2c05481b0b957-bbestwon]  
**Subject:** Fwd: Deschutes Update

Ann Campbell  
Chief of Staff (acting)  
Office of Water

Begin forwarded message:

**From:** "Goodin, John" <Goodin.John@epa.gov>  
**Date:** May 17, 2018 at 6:41:51 PM EDT  
**To:** "Ross, David P" <ross.davidp@epa.gov>, "Forsgren, Lee" <Forsgren.Lee@epa.gov>  
**Cc:** "Campbell, Ann" <Campbell.Ann@epa.gov>, "Wall, Tom" <Wall.Tom@epa.gov>, "Havard, James" <Havard.James@epa.gov>, "Connors, Sandra" <Connors.Sandra@epa.gov>  
**Subject:** Deschutes Update

DELIBERATIVE                      DRAFT

Dave et al. — the following is some updated info on the Deschutes TMDLs and a recommendation on how to engage you for input prior to Region 10 action on the TMDLs by our June 29 deadline.

## Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

With the RA's views and background info in hand next week, we would be available to brief you or provide the info to you for your review. Recommend that you could then have a call with Chris before the end of May.

## Ex. 5 Deliberative Process (DP)

Let me know if we can do anything further.

Thanks,  
John

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Background

The Deschutes River, Percival Creek, and Budd Inlet Tributaries (Phase 1) TMDL study area is located in south Puget in Thurston and Lewis Counties, Washington. The Washington Department of Ecology submitted the final Phase 1 Deschutes TMDL to EPA for approval on December 17, 2015. That document addresses a total of 73 waterbody-pollutant combinations, involving temperature, dissolved oxygen [DO], pH, fecal coliform, and fine sediment impairments.

#### Litigation

On September 6, 2017, Northwest Environmental Advocates (NWEA) filed a complaint against EPA alleging violation of section 303(d)(2) of the Clean Water Act (CWA) for failure to act on the Deschutes River TMDL submission. Section 303(d)(2) requires EPA to either approve or disapprove a state's TMDL submission within 30 days of submittal.

As part of the ongoing litigation, EPA has stated in briefs that we will act on the Deschutes TMDL by June 29, 2018. The judge has denied EPA's motion to stay the case until June 29, but has not yet ruled on the plaintiff's motion for summary judgment, and recommended a consent decree or stipulated entry of judgment to ensure EPA action on the TMDL. OGC is reviewing options while the Region continues work on the TMDL decision.

#### Current Status

The CWA requires EPA to either approve or disapprove state-submitted TMDLs, and if we disapprove, we are required to develop a replacement TMDL within 30 days.

**Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

Message

**From:** Goodin, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3EAC342F280A4B9DB4079C81F66D1913-JGOODIN]  
**Sent:** 6/12/2018 5:26:11 PM  
**To:** Ross, David P [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=119cd8b52dd14305a84863124ad6d8a6-Ross, David]; Forsgren, Lee [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a055d7329d5b470fbaa9920ce1b68a7d-Forsgren, D]  
**CC:** Campbell, Ann [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b8c25a0c2fb648b6a947694a8492311e-Campbell, Ann]; Wall, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=128011ac603c4d1a82301ada1bdfd733-Twall]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Connors, Sandra [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cc4f8f838be74de797ba9f894a0bc7b5-SCONNORS]  
**Subject:** Deschutes -- Additional Update  
**Attachments:** Enclosure\_ORA 5-21 briefing\_6-8-18 update.docx

DELIBERATIVE

Dave/Lee—we heard from Region 10 that the RA may try to reach out to Lee this week to chat about the RA’s thinking on the WA Deschutes TMDL approvals/disapprovals. I am including an updated version of their chart which summarizes the status and reasoning for each proposed TMDL. I also understand that the Region is focusing additional attention on “no surprises” for the state (up to the Governor’s office) and others, which I understand was one of the places the RA emphasized as important to moving forward here.

Let me know if you’d like anything further and feel free to let us know if/when the RA reaches out to you.  
Thanks,  
John

On May 22, 2018, at 2:19 PM, Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)> wrote:

Afternoon, Dave—as referenced last week, what follows is a quick download on the Deschutes briefing for the R10 RA yesterday, via Branch Chief Jim Havard, who was invited to listen. Ex. 5 Deliberative Process (DP)

**Ex. 5 Deliberative Process (DP)**

Ex. 5 Deliberative Process (DP) A few additional points:

- The RA plans to call you (likely sometime later this week) to discuss the matter
- The RA asked the Regional program to provide a status update to the State of WA (Dept of Ecology and also potentially the Governor’s office) before acting
- The Region, OWOW, and OGC are preparing materials in anticipation of acting by the June 29<sup>th</sup> deadline.

I’ve attached the briefing document used to brief the RA, including a separate attachment in chart form that describes the status of each TMDL, as well as our background summary email below.

Happy to follow-up before or after your call with Chris.  
Thanks,  
John

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**From:** Goodin, John  
**Sent:** Thursday, May 17, 2018 6:42 PM  
**To:** Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Cc:** Campbell, Ann <[Campbell.Ann@epa.gov](mailto:Campbell.Ann@epa.gov)>; Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>; Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)>  
**Subject:** Deschutes Update

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John

### Background

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### Litigation

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#### **Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

<05.21.2018 Deschutes R10 ORA Briefing.docx>

<Enclosure\_ORA 5-21 briefing.docx>

## Appointment

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**From:** Chung, Angela [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B3E49FCBA1AD46F1BDBE92EBB4936350-CHUNG, ANGELA]  
**Sent:** 5/17/2018 7:24:57 PM  
**To:** Hladick, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b82d04419c42423a97bd7624a3a09908-Hladick, Ch]

**Subject:** Accepted: Deschutes TMDL Brief for the RA

**Location:** ET Conference Room, Conf Line: Personal Privacy / Ex. 6 Code: Personal Privacy / Ex. 6

**Start:** 5/21/2018 5:00:00 PM

**End:** 5/21/2018 6:00:00 PM

**Show Time As:** Busy

## Appointment

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**From:** Opalski, Dan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8B5ED6410D934BF699A008A252791A55-OPALSKI, DAN]  
**Sent:** 11/6/2017 8:24:10 PM  
**To:** Opalski, Dan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8b5ed6410d934bf699a008a252791a55-Opalski, Dan]; Zell, Christopher [zell.christopher@epa.gov]; Croxton, Dave [Croxton.David@epa.gov]; Brown, Leah [Brown.Leah@epa.gov]; Havard, James [Havard.James@epa.gov]; Curtin, James [curtin.james@epa.gov]; Arrigoni, Holly [Arrigoni.Holly@epa.gov]; Lewicki, Chris [Lewicki.Chris@epa.gov]  
**CC:** Mann, Laurie [mann.laurie@epa.gov]; Byrne, Jennifer [Byrne.Jennifer@epa.gov]; Steiner-Riley, Cara [Steiner-Riley.Cara@epa.gov]; Schroer, Lee [schroer.lee@epa.gov]; Chung, Angela [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b3e49fcb1ad46f1bdbe92ebb4936350-Chung, Angela]; Lidgard, Michael [Lidgard.Michael@epa.gov]; Stern, Allyn [Stern.Allyn@epa.gov]  
**Subject:** FW: Responding to Deschutes Watershed Total Maximum Daily Load (TMDL) Notice of Intent (NOI) from Northwest Environmental Advocates (NWEA)  
**Attachments:** Deschutes TMDL\_NOI\_R10 ORA Meeting or Event Request Form.docx; Deschutes TMDL NOI Briefing\_Final.docx  
**Location:** Dan's Office in R10, Conference Line: [Personal Privacy / Ex. 6] Code: [Personal Privacy / Ex. 6]  
**Start:** 11/7/2017 6:00:00 PM  
**End:** 11/7/2017 6:45:00 PM  
**Show Time As:** Busy

-----Original Appointment-----

**From:** Opalski, Dan  
**Sent:** Thursday, October 19, 2017 4:17 PM  
**To:** Opalski, Dan; Zell, Christopher; Croxton, Dave; Brown, Leah; Havard, James; Curtin, James; Arrigoni, Holly; Lewicki, Chris  
**Cc:** Mann, Laurie; Byrne, Jennifer; Steiner-Riley, Cara; Schroer, Lee  
**Subject:** Responding to Deschutes Watershed Total Maximum Daily Load (TMDL) Notice of Intent (NOI) from Northwest Environmental Advocates (NWEA)  
**When:** Tuesday, November 07, 2017 10:00 AM-10:45 AM (UTC-08:00) Pacific Time (US & Canada).  
**Where:** Dan's Office in R10, Conference Line: [Personal Privacy / Ex. 6] Code: [Personal Privacy / Ex. 6]  
**Sensitivity:** Private

POC: Christopher Zell



## Region 10 Briefing Paper for the Office of the Regional Administrator

### MEETING/EVENT TITLE:

*"Deschutes TMDL Notice of Intent from Northwest Environmental Advocates – How to Respond"*

MEETING DATE: 11/7/2017 10:00 am – 10:45 am

LOCATION: Dan's Office

CONFERENCE CALL LINE: Ex. 5 Personal Privacy (PP) Code: Ex. 6 Personal Privacy (PP)

PREPARED BY: Chris Zell and Leah Brown

DATE: 11/7/2017

INVITED EPA ATTENDEES: Region 10: Dan Opalski; Dave Croxton; Leah Brown; Jennifer Byrne; Laurie Mann; Cara Steiner-Riley; Chris Zell. Headquarters: Jim Havard; Holly Arrigoni; Jim Curtin; Chris Lewicki.

### I. REQUESTING OFFICE

Office of Water and Watersheds / Watershed Unit

### II. TIMING

On August 23, 2017, NWEA provided a Notice of Intent (NOI) to sue EPA under the Clean Water Act (CWA) for failure to perform the mandatory duty of approving or disapproving the Deschutes River TMDL within the statutorily mandated 30-day timeframe. NWEA may initiate litigation at any time. NWEA indicated in conversations with EPA and Ecology on October 13, 2017, that it intends to file suit soon.

### III. PURPOSE

- Summarize the Deschutes River TMDL and administrative history
- Share outcomes from informal conversations with Ecology and NWEA following receipt of the NOI

## Ex. 5 Attorney Client (AC)

- Meeting outcomes include Regional agreement on recommended path forward and identification of additional briefings to confirm recommendation with Headquarters

### IV. BACKGROUND/HISTORY

The Deschutes River, Percival Creek, and Budd Inlet Tributaries (Phase 1) TMDL study area (186 mi<sup>2</sup>) is located in south Puget Sound and is situated within the boundaries of Thurston and Lewis Counties, Washington. The study



area includes the major cities or towns of Olympia, Lacey, Tumwater, and Rainier. During early stages of TMDL development (~2005-2014), Ecology initially planned to submit a TMDL addressing impairments in both freshwater (Deschutes) and marine (Budd Inlet) water quality limited segments. **Ex. 5 Attorney Client (AC)**

### **Ex. 5 Attorney Client (AC)**

Ecology decided to split the TMDL into freshwater and marine segments. Ecology submitted the freshwater (Phase 1) Deschutes TMDL to EPA for approval on December 17, 2015. **Ex. 5 Attorney Client (AC)**

### **Ex. 5 Attorney Client (AC)**

The 2015 TMDL submittal included a request for EPA to approve allocations for 73 Water Quality Limited Segments (WQLSs) impaired by five pollutants (temperature, dissolved oxygen [DO], pH, fecal coliform [bacteria], and fine sediment). Beginning in February 2016, EPA and Ecology have discussed opportunities to remedy legal and technical shortcomings of the TMDL that have been identified by both EPA (WU, ORC) and potential plaintiffs (NWEA, Squaxin Island Tribe). **Ex. 5 Attorney Client (AC)**

### **Ex. 5 Attorney Client (AC)**

# **Ex. 5 Attorney Client (AC)**

**Ex. 5 Attorney Client (AC)** Ecology chose to send another submittal letter concerning the Deschutes TMDL on July 17, 2017, asking EPA “to focus” on a subset of TMDLs for bacteria, temperature, and fine sediment (n = 46). The 2017 letter states that Ecology will revisit the Deschutes River TMDL for necessary parameters in 2030 if actions included in its implementation plan (e.g., development of full mature riparian vegetation) are not met by then. In addition, the 2017 letter included two augmentations to the bacteria and water temperature TMDLs intended to remedy some acknowledged deficiencies in the original submission. These augmentations include: (1) an equation to calculate a numeric daily loading value for temperature (allowable stormwater discharge); and (2) including a table expressing bacteria allocation in daily units. **Ex. 5 Attorney Client (AC)**

## **Ex. 5 Attorney Client (AC)**

# **Ex. 5 Attorney Client (AC)**

## Deschutes (WA) TMDL Key Dates

Dates	Event
2004	Sampling Plan Completed
2003 - 2007	Monitoring
2007 - 2014	TMDL Development
April 2014	Announcement to Submit Freshwater Components Only
December 2015	Ecology Submitted TMDL to EPA
February - October 2016	EPA Concerns Shared with Ecology
June 2016	Ecology Hosted Squaxin Island Tribe – Tribal Coordination Meeting
August 2016	EPA/Ecology Discussion with NWEA in Portland, OR
<b>Ex. 5 Attorney Client (AC)</b>	
January 2017	EPA Received Puget Sound FOIA from NWEA
March 2017	EPA Developed Bacteria TMDLs
June 2017	EPA & Ecology Negotiate “Resubmit” Letter
July 2017	EPA Received 2 <sup>nd</sup> Submittal Letter from Ecology
<b>Ex. 5 Attorney Client (AC)</b>	
August 2017	EPA Received Deschutes NOI from NWEA
<b>Ex. 5 Attorney Client (AC)</b>	
October 13, 2017	EPA Region 10 Discussion with NWEA, re: NOI

### V. KEY ISSUES

## Ex. 5 Attorney Client (AC)

- NWEA submitted a mandatory duty NOI on August 23, 2017.
- A conversation with NWEA on October 13, 2017, indicates the July 2017 resubmittal letter will not deter litigation.

## Ex. 5 Attorney Client (AC)

### VI. ADDITIONAL POLICY AND LEGAL INFORMATION

Section 303(d)(2) of the CWA requires EPA to “either approve or disapprove [a TMDL] not later than thirty days after the date of submission.” If EPA disapproves a TMDL, Section 303(d)(2) requires EPA to issue a substitute TMDL within 30 days of disapproval.

**Ex. 5 Attorney Client (AC)**

## Ex. 5 Attorney Client (AC)

# **Ex. 5 Attorney Client (AC)**

# Ex. 5 Attorney Client (AC)

## IX. NEXT STEPS / UPCOMING DEADLINES

NWEA has not yet filed its complaint, so there are no pending litigation-related deadlines. Ex. 5 Attorney Client (AC)

# Ex. 5 Attorney Client (AC)

# **Ex. 5 Attorney Client (AC)**

# **Ex. 5 Attorney Client (AC)**

# **Ex. 5 Attorney Client (AC)**

# **Ex. 5 Attorney Client (AC)**



# **Ex. 5 Attorney Client (AC)**

## Appointment

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**From:** Chung, Angela [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B3E49FCBA1AD46F1BDBE92EBB4936350-CHUNG, ANGELA]  
**Sent:** 11/6/2017 9:21:16 PM  
**To:** Opalski, Dan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8B5ED6410D934BF699A008A252791A55-OPALSKI, DAN]  
**Subject:** Tentative: Responding to Deschutes Watershed Total Maximum Daily Load (TMDL) Notice of Intent (NOI) from Northwest Environmental Advocates (NWEA)  
**Location:** Dan's Office in R10, Conference Line: Personal Privacy / Ex. 6 Code: Personal Privacy / Ex. 6  
**Start:** 11/7/2017 6:00:00 PM  
**End:** 11/7/2017 6:45:00 PM  
**Recurrence:** (none)

## Appointment

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**From:** Chung, Angela [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B3E49FCBA1AD46F1BDBE92EBB4936350-CHUNG, ANGELA]  
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**Subject:** Accepted: Deschutes TMDL Brief for the RA  
**Location:** ET Conference Room, Conf Line: Personal Privacy / Ex. 6 Code: Personal Privacy / Ex. 6  
**Start:** 5/21/2018 5:00:00 PM  
**End:** 5/21/2018 6:00:00 PM  
**Show Time As:** Busy

**EPA REGION 10 OWW TOPIC BRIEFING: Deschutes River TMDL Process Options**  
DRAFT - INTERNAL and DELIBERATIVE  
February 23, 2017

**Purpose**

This briefing paper serves to outline process options for taking action on the Deschutes River TMDL in Washington.

Ex. 5 Deliberative Process (DP)

**Ex. 5 Deliberative Process (DP)**

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## **Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

Message

**From:** Goodin, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3EAC342F280A4B9DB4079C81F66D1913-JGOODIN]  
**Sent:** 4/16/2018 3:23:16 PM  
**To:** Wall, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=128011ac603c4d1a82301ada1bdfd733-Twall]; Connors, Sandra [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cc4f8f838be74de797ba9f894a0bc7b5-SCONNORS]  
**CC:** Weiler, Katherine [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b2ca8131db564daa8ccc9639f70f6235-KWeiler]  
**Subject:** RE: UPDATE: Deschutes TMDL action timing and status

Thanks, Tom. The last time I raised this issue, Dave was very interested in engaging. Despite the timing for RA briefing, and given the court schedules, seems like we'd want to push up this discussion. I'll start by verbally raising in the ODs brown bag Wednesday (Katherine).

Thanks  
John

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**From:** Wall, Tom  
**Sent:** Monday, April 16, 2018 11:03 AM  
**To:** Goodin, John <Goodin.John@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>  
**Subject:** UPDATE: Deschutes TMDL action timing and status

John –

## Ex. 5 Deliberative Process (DP)

Good news is the deadline for Region action is now June 29.

Re: content of the Region's action, see note from Dave Croxton below. We'll be working with the Region on their decision document.

Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

# Ex. 5 Deliberative Process (DP)

Please let me know if you'd like more information, or would like this note shortened into something to send to the OW-IO.

Tom Wall, Director  
Watershed Restoration, Assessment and Protection Division  
Office of Wetlands, Oceans and Watersheds  
U.S. EPA  
[Wall.tom@epa.gov](mailto:Wall.tom@epa.gov)  
202/564-4179

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**From:** Croxton, David  
**Sent:** Friday, April 13, 2018 7:24 PM

**To:** Lewicki, Chris <Lewicki.Chris@epa.gov>; Brown, Leah <Brown.Leah@epa.gov>  
**Cc:** Havard, James <Havard.James@epa.gov>; Monschein, Eric <Monschein.Eric@epa.gov>; Opalski, Dan <Opalski.Dan@epa.gov>; Hodgkiss, Miranda <Hodgkiss.Miranda@epa.gov>  
**Subject:** RE: Question for Croxton and Leah Re: Deschutes TMDLs

Hi-  
Miranda and I met with Dan today to discuss process steps and help answer your questions.

The RA is aware of the Deschutes TMDL status, **Ex. 5 Deliberative Process (DP)**  
**Ex. 5 Deliberative Process (DP)** We have not briefed him on the details of the TMDL yet and would like to be closer to final policy/program decisions before doing so. We plan to share a draft decision document with you and OGC by the week of 4/30. We could also set-up a Division/Office briefing for that week if desired. We want to allow a couple weeks for input by HQ and to sort-out changes. The Region would then be in good position to brief the RA by the last week of May.

We would leave the matter to you and the AA of whether the AA wants to just be in discussion with the RA or have a briefing from the Region. We expect that a formal briefing for both of them will not be needed.

I understand that you may be feeling the need to get information to the AA sooner than the end of May and certainly you have the information from our other briefings. **Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

Thanks,  
Dave



Message

**From:** Opalski, Dan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8B5ED6410D934BF699A008A252791A55-OPALSKI, DAN]  
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**CC:** Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Connors, Sandra [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cc4f8f838be74de797ba9f894a0bc7b5-SCONNORS]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Chung, Angela [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b3e49fcba1ad46f1bdbe92ebb4936350-Chung, Angela]; Croxton, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ca7b9940863640d5b96f4295ea3c9641-Croxton, Dave]  
**Subject:** Re: feedback from Dave Ross re: Deschutes TMDLs

Tom — Thanks for the call and this follow-up. As in most of these matters, I think it also is important that Dave is hearing from HQ folks given the considerable amount of time some of the staff have invested with us already. (The note to Dave refers to our intended action, but does not provide any indication of review or involvement by HQ staff.)

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

We will proceed in the meantime to get Chris more info on the details — he already is aware of the status in general. Thanks again.

Sent from my iPhone

On Apr 10, 2018, at 2:50 PM, Wall, Tom <Wall.Tom@epa.gov> wrote:

Hi Dan — **Ex. 5 Deliberative Process (DP)** We'll be happy to work with you to help tee this up on the timeline that's needed. Thank you,

Tom Wall, Director  
Watershed Restoration, Assessment and Protection Division  
Office of Wetlands, Oceans and Watersheds  
U.S. EPA  
[Wall.tom@epa.gov](mailto:Wall.tom@epa.gov)  
202/564-4179

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**From:** Ross, David P  
**Sent:** Thursday, March 22, 2018 4:17 PM  
**To:** Connors, Sandra <Connors.Sandra@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Wall, Tom <Wall.Tom@epa.gov>  
**Subject:** Re: **Ex. 5 Deliberative Process (DP)** for Two TMDL-Related Matters

Hi Sandra,

First question. Is the James River case

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

Regarding the Deschutes River matter,

**Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

I will weigh in on the James River matter after you answer my question above. Thanks.

Dave

Sent from my iPad

On Mar 21, 2018, at 7:14 PM, Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)> wrote:

DELIBERATIVE

Dave - We recommend your support for the proposed paths identified below in litigation related to the Chesapeake Bay (CB) TMDLs and the Deschutes River TMDLs. We would be happy to provide additional background or briefings as desired.

CB TMDL:

**Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

Deschutes River:

**Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

If you are comfortable with these approaches, we will convey that to OGC.

Thanks,

Sandra

---

Sandra L. Connors  
Deputy Director

Office of Wetlands, Oceans, and Watersheds  
US Environmental Protection Agency, MC 4501T  
1200 Pennsylvania Avenue, WJCW 7130A  
Washington, DC 20460  
(202)564-4231

[connors.sandra@epa.gov](mailto:connors.sandra@epa.gov)

**From:** [Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)  
**Date:** March 9, 2018 at 11:55:24 AM CST  
**To:** [ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)  
**Cc:** Lee Forsgren <[forsgren.lee@epa.gov](mailto:forsgren.lee@epa.gov)>, Tom Wall <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>, [Havard.James@epa.gov](mailto:Havard.James@epa.gov)  
**Subject:** **FYI: Deschutes TMDL Joint Status Report Filing Today**

DELIBERATE

Dave— As mentioned at staff meeting Monday, today DOJ and plaintiff are filing a joint status report in Northwest Environmental Advocates v EPA, USDC, W.D. of Washington. This case alleges EPA failed to carry out its nondiscretionary duty to approve or disapprove the Deschutes River TMDLs within thirty days after submission by the State. The TMDL submission by the State involves 73 water segments and 5 pollutants, and was submitted in 2015 and supplemented in 2017.

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

Thanks  
John

Sent from my iPhone



Message

**From:** Connors, Sandra [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CC4F8F838BE74DE797BA9F894A0BC7B5-SCONNORS]  
**Sent:** 4/10/2018 11:24:12 PM  
**To:** Wall, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=128011ac603c4d1a82301ada1bdfd733-Twall]  
**Subject:** Re: feedback from Dan O re: Deschutes TMDLs and meeting with OR **Ex. 5 Deliberative Process (DP)**

Thx Tom.

Sent from my iPhone

On Apr 10, 2018, at 6:11 PM, Wall, Tom <Wall.Tom@epa.gov> wrote:

Re: Deschutes, Dan said that any discussion between RA and Dave should happen soon. **Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

Re: OR **Ex. 5 Deliberative Process (DP)**

Tom Wall, Director  
Watershed Restoration, Assessment and Protection Division  
Office of Wetlands, Oceans and Watersheds  
U.S. EPA  
[Wall.tom@epa.gov](mailto:Wall.tom@epa.gov)  
202/564-4179

---

**From:** Wall, Tom  
**Sent:** Tuesday, April 10, 2018 5:51 PM  
**To:** Opalski, Dan <[Opalski.Dan@epa.gov](mailto:Opalski.Dan@epa.gov)>  
**Cc:** Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>; Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>  
**Subject:** feedback from Dave Ross re: Deschutes TMDLs

Hi Dan – **Ex. 5 Deliberative Process (DP)** We'll be happy to work with you to help tee this up on the timeline that's needed. Thank you,

Tom Wall, Director  
Watershed Restoration, Assessment and Protection Division  
Office of Wetlands, Oceans and Watersheds  
U.S. EPA  
[Wall.tom@epa.gov](mailto:Wall.tom@epa.gov)  
202/564-4179

---

**From:** Ross, David P  
**Sent:** Thursday, March 22, 2018 4:17 PM  
**To:** Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)>  
**Cc:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>; Best-Wong, Benita <[Best-Wong.Benita@epa.gov](mailto:Best-Wong.Benita@epa.gov)>;

Campbell, Ann <Campbell.Ann@epa.gov>; Wall, Tom <Wall.Tom@epa.gov>

**Subject:** Re: **Ex. 5 Deliberative Process (DP)** for Two TMDL-Related Matters

Hi Sandra,

First question. Is the James River case

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

Regarding the Deschutes River matter

**Ex. 5 Deliberative Process (DP)**

I will weigh in on the James River matter after you answer my question above. Thanks.

Dave

Sent from my iPad

On Mar 21, 2018, at 7:14 PM, Connors, Sandra <Connors.Sandra@epa.gov> wrote:

DELIBERATIVE

Dave - We recommend your support for the proposed paths identified below in litigation related to the Chesapeake Bay (CB) TMDLs and the Deschutes River TMDLs. We would be happy to provide additional background or briefings as desired.

CB TMDL:

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

Deschutes River: John previously shared with you the note below, and DOJ is now proposing to seek a joint motion with Northwest Environmental Advocates

(NWEA) for a stay until July 13th to allow R10 to act on the 70 plus TMDLs submitted by the State. OGC is supportive and we plan to coordinate closely with R10 as the Region contemplates recommending many disapprovals.

If you are comfortable with these approaches, we will convey that to OGC.

Thanks,

*Sandra*

---

Sandra L. Connors  
Deputy Director

Office of Wetlands, Oceans, and Watersheds  
US Environmental Protection Agency, MC 4501T  
1200 Pennsylvania Avenue, WJCW 7130A  
Washington, DC 20460  
(202)564-4231

[connors.sandra@epa.gov](mailto:connors.sandra@epa.gov)

**From:** [Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)

**Date:** March 9, 2018 at 11:55:24 AM CST

**To:** [ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)

**Cc:** Lee Forsgren <[forsgren.lee@epa.gov](mailto:forsgren.lee@epa.gov)>, Tom Wall <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>, [Havard.James@epa.gov](mailto:Havard.James@epa.gov)

**Subject:** FYI: Deschutes TMDL Joint Status Report Filing Today

DELIBERATE

Dave— As mentioned at staff meeting Monday, today DOJ and plaintiff are filing a joint status report in Northwest Environmental Advocates v EPA, USDC, W.D. of Washington. This case alleges EPA failed to carry out its nondiscretionary duty to approve or disapprove the Deschutes River TMDLs within thirty days after submission by the State. The TMDL submission by the State involves 73 water segments and 5 pollutants, and was submitted in 2015 and supplemented in 2017.

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

Thanks  
John

Sent from my iPhone



Message

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**From:** Curtin, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=728048227D024E0CB67932883007A4F9-JCURTIN]  
**Sent:** 5/22/2018 5:31:46 PM  
**To:** Fotouhi, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=feba0d56aab43f8a9174b18218c1182-Fotouhi, Da]  
**CC:** Neugeboren, Steven [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfd837ac503949a9820715b53ba921e6-SNEUGEBO]; Schroer, Lee [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=573fc5bb4942495d9fc3cd9438634244-LSCHROER]  
**Subject:** FW: Deschutes -- Update on briefing with RA and next steps  
**Attachments:** 05.21.2018 Deschutes R10 ORA Briefing.docx; Enclosure\_ORA 5-21 briefing.docx

David,

This is an FYI re OW staff's report up their chain re Deschutes briefing for R10 RA yesterday and possible RA call to Dave Ross later this week. Consistent with my recollection of the call.

**Jim**

Jim Curtin  
USEPA Office of General Counsel  
Water Law Office  
202-564-5482  
William Jefferson Clinton North Rm. 7451

---

**From:** Havard, James  
**Sent:** Tuesday, May 22, 2018 1:27 PM  
**To:** Goodin, John <Goodin.John@epa.gov>; Wall, Tom <Wall.Tom@epa.gov>  
**Cc:** Lewicki, Chris <Lewicki.Chris@epa.gov>; Curtin, James <curtin.james@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>  
**Subject:** Deschutes -- Update on briefing with RA and next steps

John –

Jim Curtin and I listened in on the Deschutes briefing yesterday.

**Ex. 5 Deliberative Process (DP)**

## Ex. 5 Deliberative Process (DP)

I recommend you send the papers used by the Region for the RA (attached), reforwarding the note below, as background for Dave Ross, in prep for a potential call from the RA. We also can provide additional briefing if needed/appropriate.

My staff and OGC are working with the Region on the details of the decision document.

Thanks!

Jim

---

**From:** Goodin, John  
**Sent:** Thursday, May 17, 2018 6:42 PM  
**To:** Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Cc:** Campbell, Ann <[Campbell.Ann@epa.gov](mailto:Campbell.Ann@epa.gov)>; Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>; Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)>  
**Subject:** Deschutes Update

DELIBERATIVE                      DRAFT

Dave et al.— the following is some updated info on the Deschutes TMDLs and a recommendation on how to engage you for input prior to Region 10 action on the TMDLs by our June 29 deadline.

## Ex. 5 Deliberative Process (DP)

**Ex. 5 Deliberative Process (DP)** With the RA's views and background info in hand next week, we would be available to brief you or provide the info to you for your review. Recommend that you could then have a call with Chris before the end of May.

## Ex. 5 Deliberative Process (DP)

Let me know if we can do anything further.

Thanks,  
John

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### Background

The Deschutes River, Percival Creek, and Budd Inlet Tributaries (Phase 1) TMDL study area is located in south Puget in Thurston and Lewis Counties, Washington. The Washington Department of Ecology submitted the final Phase 1 Deschutes TMDL to EPA for approval on December 17, 2015. That document addresses a total of 73 waterbody-pollutant combinations, involving temperature, dissolved oxygen [DO], pH, fecal coliform, and fine sediment impairments.

### Litigation

On September 6, 2017, Northwest Environmental Advocates (NWEA) filed a complaint against EPA alleging violation of section 303(d)(2) of the Clean Water Act (CWA) for failure to act on the Deschutes River TMDL submission. Section 303(d)(2) requires EPA to either approve or disapprove a state's TMDL submission within 30 days of submittal.

As part of the ongoing litigation, EPA has stated in briefs that we will act on the Deschutes TMDL by June 29, 2018. The judge has denied EPA's motion to stay the case until June 29, but has not yet ruled on the plaintiff's motion for summary judgment, and recommended a consent decree or stipulated entry of judgment to ensure EPA action on the TMDL. OGC is reviewing options while the Region continues work on the TMDL decision.

#### Current Status

The CWA requires EPA to either approve or disapprove state-submitted TMDLs, and if we disapprove, we are required to develop a replacement TMDL within 30 days.

### **Ex. 5 Deliberative Process (DP)**

# **Ex. 5 Deliberative Process (DP)**

Message

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**From:** Wall, Tom [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=128011AC603C4D1A82301ADA1BDFD733-TWALL]  
**Sent:** 6/11/2018 9:59:01 PM  
**To:** Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]  
**CC:** Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]  
**Subject:** Recommendation re: Latest Deschutes Info -- see highlighted text

---

**From:** Havard, James  
**Sent:** Monday, June 11, 2018 3:57 PM  
**To:** Wall, Tom <Wall.Tom@epa.gov>  
**Cc:** Hunter, Christopher <Hunter.Christopher@epa.gov>; Monschein, Eric <Monschein.Eric@epa.gov>; Lewicki, Chris <Lewicki.Chris@epa.gov>  
**Subject:** FW: Latest Deschutes Info

Tom – Can you forward this on as our recommendation to John? Thanks!

---

**From:** Hunter, Christopher  
**Sent:** Monday, June 11, 2018 3:54 PM  
**To:** Havard, James <Havard.James@epa.gov>  
**Cc:** Lewicki, Chris <Lewicki.Chris@epa.gov>; Monschein, Eric <Monschein.Eric@epa.gov>; Wall, Tom <Wall.Tom@epa.gov>  
**Subject:** RE: Latest Deschutes Info

Jim and Tom,

## Ex. 5 Deliberative Process (DP)

I agree that John should thank Dan for the updated information and forward the information to Dave R – but also remind Dan that Dave is waiting for the RA's call to discuss, and that needs to happen as soon as possible in order to meet the June 29<sup>th</sup> deadline.

Chris

Chris Hunter  
202.566.1454  
Watershed Branch, Office of Water  
US Environmental Protection Agency

---

**From:** Havard, James  
**Sent:** Monday, June 11, 2018 2:58 PM  
**To:** Hunter, Christopher <Hunter.Christopher@epa.gov>  
**Cc:** Lewicki, Chris <Lewicki.Chris@epa.gov>; Monschein, Eric <Monschein.Eric@epa.gov>; Wall, Tom <Wall.Tom@epa.gov>  
**Subject:** FW: Latest Deschutes Info

Chris –

Please provide a recommendation on what John should do.

I imagine he should tell Dan “thanks for the update” and forward the revised paper to Dave R and say “Dave: Here is a revised paper/enclosure. We understand the RA plans to reach out shortly.”

Further thoughts?

Can you verify if the paper has changed substantially?

Thanks!

---

**From:** Goodin, John  
**Sent:** Monday, June 11, 2018 2:45 PM  
**To:** Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>  
**Subject:** FW: Latest Deschutes Info

Folks—would you give these a look and advise on my response ASAP to Dan (and to Lee/Dave)?

Thanks,

John

---

**From:** Opalski, Dan  
**Sent:** Monday, June 11, 2018 1:47 PM  
**To:** Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>  
**Subject:** FW: Latest Deschutes Info

John – FYI. If any thoughts or insights, please let me know if it would be good to talk. Thx.

---

**From:** Opalski, Dan  
**Sent:** Friday, June 8, 2018 11:14 AM  
**To:** Hladick, Christopher <[hladick.christopher@epa.gov](mailto:hladick.christopher@epa.gov)>  
**Cc:** Gahner, Pamela <[gahner.pamela@epa.gov](mailto:gahner.pamela@epa.gov)>  
**Subject:** Latest Deschutes Info

Chris –

Not knowing exactly when/how you may have an opportunity with Lee and Dave, here is an updated version of the briefing paper we did for you, including an updated version of the table that summarizes the action by segment/pollutant. As I mentioned, I believe Dave received copies of the original package we provided to you for your 5/21 briefing.

## Ex. 5 Deliberative Process (DP)

## **Ex. 5 Deliberative Process (DP)**

Please let me know if you want us to put together anything more/different.

Dan Opalski  
Director  
Office of Water and Watersheds  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101  
206-553-1855  
FAX: 206-553-1280

Message

**From:** Neugeboren, Steven [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFD837AC503949A9820715B53BA921E6-SNEUGEBO]  
**Sent:** 6/27/2018 5:51:16 PM  
**To:** Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]  
**CC:** Curtin, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=728048227d024e0cb67932883007a4f9-JCURTIN]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Schroer, Lee [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=573fc5bb4942495d9fc3cd9438634244-LSCHROER]; Brown, Leah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b8e396f718a74d0bb01f1e35b7319572-Rindner, Le]; Stern, Allyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2e2d6f5df08d4e9abbff2c0880407775-Stern, Allyn]; Steiner-Riley, Cara [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bef7d04f2e64e4b8b90235a30cc7109-Steiner-Riley, Cara]; Hodgkiss, Miranda [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9d441ddb44ac4ed486058d2c2690b977-Hodgkiss, Miranda]; Croxton, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ca7b9940863640d5b96f4295ea3c9641-Croxton, Dave]  
**Subject:** RE: Deschutes Bullets for David F

That's great. I'll let david know.

Steve Neugeboren  
Associate General Counsel for Water  
U.S. EPA  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
202 (564-5488)

---

**From:** Goodin, John  
**Sent:** Wednesday, June 27, 2018 1:50 PM  
**To:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
**Cc:** Curtin, James <curtin.james@epa.gov>; Havard, James <Havard.James@epa.gov>; Schroer, Lee <schroer.lee@epa.gov>; Brown, Leah <Brown.Leah@epa.gov>; Stern, Allyn <Stern.Allyn@epa.gov>; Steiner-Riley, Cara <Steiner-Riley.Cara@epa.gov>; Hodgkiss, Miranda <Hodgkiss.Miranda@epa.gov>; Croxton, David <Croxton.David@epa.gov>  
**Subject:** Re: Deschutes Bullets for David F

Steve et al. — Thank you.

**Ex. 5 Attorney Client (AC)**

# Ex. 5 Attorney Client (AC)

Thanks again,  
John

Sent from my iPhone

On Jun 27, 2018, at 12:26 PM, Neugeboren, Steven <Neugeboren.Steven@epa.gov> wrote:

## Ex. 5 Attorney Client (AC)

Sent from my iPhone

Steven Neugeboren  
Associate General Counsel for Water  
U.S. EPA  
202-564-5488

On Jun 27, 2018, at 12:19 PM, Curtin, James <curtin.james@epa.gov> wrote:

Here is a clean, revised draft of the two-page issues paper OGC is developing for David F. I have done my best to address all comments, which do make this a far better document. I've left in the significant marginal comments for your reference.

If folks can give this one last look – and add any last bits - I'll then put it in final and send down to David.

Thanks again.

*Jim*

Jim Curtin  
USEPA Office of General Counsel  
Water Law Office  
202-564-5482  
William Jefferson Clinton North Rm. 7451

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**From:** Neugeboren, Steven  
**Sent:** Wednesday, June 27, 2018 11:32 AM  
**To:** Havard, James <Havard.James@epa.gov>; Schroer, Lee <schroer.lee@epa.gov>; Brown, Leah <Brown.Leah@epa.gov>; Curtin, James <curtin.james@epa.gov>  
**Cc:** Stern, Allyn <Stern.Allyn@epa.gov>; Steiner-Riley, Cara <Steiner-Riley.Cara@epa.gov>; Hodgkiss, Miranda <Hodgkiss.Miranda@epa.gov>; Croxton, David <Croxton.David@epa.gov>; Goodin, John <Goodin.John@epa.gov>  
**Subject:** RE: Deschutes Bullets for David F

My comments attached. I highlighted in yellow to make it easy. John et al

Ex. 5 Attorney Client (AC)

## Ex. 5 Attorney Client (AC)



Steve Neugeboren  
Associate General Counsel for Water  
U.S. EPA  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
202 (564-5488)

---

**From:** Havard, James  
**Sent:** Wednesday, June 27, 2018 10:49 AM  
**To:** Schroer, Lee <[schroer.lee@epa.gov](mailto:schroer.lee@epa.gov)>; Brown, Leah <[Brown.Leah@epa.gov](mailto:Brown.Leah@epa.gov)>; Curtin, James <[curtin.james@epa.gov](mailto:curtin.james@epa.gov)>; Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>  
**Cc:** Stern, Allyn <[Stern.Allyn@epa.gov](mailto:Stern.Allyn@epa.gov)>; Steiner-Riley, Cara <[Steiner-Riley.Cara@epa.gov](mailto:Steiner-Riley.Cara@epa.gov)>; Hodgkiss, Miranda <[Hodgkiss.Miranda@epa.gov](mailto:Hodgkiss.Miranda@epa.gov)>; Croxton, David <[Croxton.David@epa.gov](mailto:Croxton.David@epa.gov)>; Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>  
**Subject:** RE: Deschutes Bullets for David F  
**Importance:** High

Here are comments from the WB. Looping in John Goodin as well in case he will review as well.

Thanks

Jim

---

**From:** Schroer, Lee  
**Sent:** Wednesday, June 27, 2018 8:49 AM  
**To:** Brown, Leah <[Brown.Leah@epa.gov](mailto:Brown.Leah@epa.gov)>; Curtin, James <[curtin.james@epa.gov](mailto:curtin.james@epa.gov)>; Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>  
**Cc:** Stern, Allyn <[Stern.Allyn@epa.gov](mailto:Stern.Allyn@epa.gov)>; Steiner-Riley, Cara <[Steiner-Riley.Cara@epa.gov](mailto:Steiner-Riley.Cara@epa.gov)>; Hodgkiss, Miranda <[Hodgkiss.Miranda@epa.gov](mailto:Hodgkiss.Miranda@epa.gov)>; Croxton, David <[Croxton.David@epa.gov](mailto:Croxton.David@epa.gov)>  
**Subject:** RE: Deschutes Bullets for David F

Jim,

I added some comments on Leah's version.

Lee C. Schroer  
Office of General Counsel (Mail Code 2355A)  
Room 7518C William Jefferson Clinton Bldg North  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460  
Tel: 202-564-5476

---

**From:** Brown, Leah  
**Sent:** Tuesday, June 26, 2018 8:41 PM  
**To:** Curtin, James <[curtin.james@epa.gov](mailto:curtin.james@epa.gov)>; Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>; Schroer, Lee <[schroer.lee@epa.gov](mailto:schroer.lee@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>

Cc: Stern, Allyn <[Stern.Allyn@epa.gov](mailto:Stern.Allyn@epa.gov)>; Steiner-Riley, Cara <[Steiner-Riley.Cara@epa.gov](mailto:Steiner-Riley.Cara@epa.gov)>; Hodgkiss, Miranda <[Hodgkiss.Miranda@epa.gov](mailto:Hodgkiss.Miranda@epa.gov)>; Croxton, David <[Croxton.David@epa.gov](mailto:Croxton.David@epa.gov)>

Subject: RE: Deschutes Bullets for David F

Thanks, Jim. My comments are attached.

**Ex. 5 Attorney Client (AC)**

## **Ex. 5 Attorney Client (AC)**

Leah Brown  
Assistant Regional Counsel  
(206) 553-8694  
[brown.leah@epa.gov](mailto:brown.leah@epa.gov)

---

**From:** Curtin, James

**Sent:** Tuesday, June 26, 2018 2:50 PM

**To:** Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>; Schroer, Lee <[schroer.lee@epa.gov](mailto:schroer.lee@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>; Brown, Leah <[Brown.Leah@epa.gov](mailto:Brown.Leah@epa.gov)>

**Subject:** Deschutes Bullets for David F

## **Ex. 5 Attorney Client (AC)**

Ex. 5 Attorney Client (AC)

Here's a draft. If you get comments back to me by 10am Wednesday morning, I can get this to David by noon.

Thanks.

*Jim*

Jim Curtin  
USEPA Office of General Counsel  
Water Law Office  
202-564-5482  
William Jefferson Clinton North Rm. 7451

<Deschutes TMDL Decision Document Issues\_Consolidated OGC\_WB Comments.docx>

Message

**From:** Hodgkiss, Miranda [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9D441DDB44AC4ED486058D2C2690B977-HODGKISS, MIRANDA]  
**Sent:** 6/27/2018 5:06:54 PM  
**To:** Brown, Leah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b8e396f718a74d0bb01f1e35b7319572-Rindner, Le]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Curtin, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=728048227d024e0cb67932883007a4f9-JCURTIN]; Neugeboren, Steven [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfd837ac503949a9820715b53ba921e6-SNEUGEBO]; Schroer, Lee [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=573fc5bb4942495d9fc3cd9438634244-LSCHROER]  
**CC:** Stern, Allyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2e2d6f5df08d4e9abbff2c0880407775-Stern, Allyn]; Steiner-Riley, Cara [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bef7d04f2e64e4b8b90235a30cc7109-Steiner-Riley, Cara]; Croxton, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ca7b9940863640d5b96f4295ea3c9641-Croxton, Dave]; Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]  
**Subject:** RE: Deschutes Bullets for David F

Jim C. — can you make the following changes?

**Ex. 5 Attorney Client (AC)**

**Ex. 5 Attorney Client (AC)**

**Ex. 5 Attorney Client (AC)**

Thanks,

Miranda Hodgkiss  
Office of Water and Watersheds  
U.S. EPA Region 10  
(206) 553-0692  
[hodgkiss.miranda@epa.gov](mailto:hodgkiss.miranda@epa.gov)

---

**From:** Brown, Leah  
**Sent:** Wednesday, June 27, 2018 9:51 AM  
**To:** Havard, James <Havard.James@epa.gov>; Curtin, James <curtin.james@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Schroer, Lee <schroer.lee@epa.gov>  
**Cc:** Stern, Allyn <Stern.Allyn@epa.gov>; Steiner-Riley, Cara <Steiner-Riley.Cara@epa.gov>; Hodgkiss, Miranda <Hodgkiss.Miranda@epa.gov>; Croxton, David <Croxton.David@epa.gov>; Goodin, John <Goodin.John@epa.gov>  
**Subject:** RE: Deschutes Bullets for David F

Thanks, Jim. My comments are attached. We have fully briefed the Regional Administrator on our TMDL action and are prepared to answer all of the comments Steve highlighted in the margin.

As to Jim H.'s point below,

**Ex. 5 Attorney Client (AC)**

## Ex. 5 Attorney Client (AC)

Leah Brown  
Assistant Regional Counsel  
(206) 553-8694  
[brown.leah@epa.gov](mailto:brown.leah@epa.gov)

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**From:** Havard, James

**Sent:** Wednesday, June 27, 2018 9:43 AM

**To:** Curtin, James <[curtin.james@epa.gov](mailto:curtin.james@epa.gov)>; Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>; Schroer, Lee <[schroer.lee@epa.gov](mailto:schroer.lee@epa.gov)>; Brown, Leah <[Brown.Leah@epa.gov](mailto:Brown.Leah@epa.gov)>

**Cc:** Stern, Allyn <[Stern.Allyn@epa.gov](mailto:Stern.Allyn@epa.gov)>; Steiner-Riley, Cara <[Steiner-Riley.Cara@epa.gov](mailto:Steiner-Riley.Cara@epa.gov)>; Hodgkiss, Miranda <[Hodgkiss.Miranda@epa.gov](mailto:Hodgkiss.Miranda@epa.gov)>; Croxton, David <[Croxton.David@epa.gov](mailto:Croxton.David@epa.gov)>; Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>

**Subject:** RE: Deschutes Bullets for David F

Jim –

One additional comment on the substance:

**Ex. 5 Attorney Client (AC)**

## Ex. 5 Attorney Client (AC)

Thanks Jim

---

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**Sent:** Wednesday, June 27, 2018 12:19 PM

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If folks can give this one last look – and add any last bits - I'll then put it in final and send down to David.

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USEPA Office of General Counsel  
Water Law Office  
202-564-5482  
William Jefferson Clinton North Rm. 7451

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**Subject:** RE: Deschutes Bullets for David F

My comments attached. I highlighted in yellow to make it easy. John et al

**Ex. 5 Attorney Client (AC)**

# Ex. 5 Attorney Client (AC)

Steve Neugeboren  
Associate General Counsel for Water  
U.S. EPA  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
202 (564-5488)

---

**From:** Havard, James  
**Sent:** Wednesday, June 27, 2018 10:49 AM  
**To:** Schroer, Lee <schroer.lee@epa.gov>; Brown, Leah <Brown.Leah@epa.gov>; Curtin, James <curtin.james@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
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**Subject:** RE: Deschutes Bullets for David F  
**Importance:** High

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Jim

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**Subject:** RE: Deschutes Bullets for David F

Jim,

I added some comments on Leah's version.

Lee C. Schroer  
Office of General Counsel (Mail Code 2355A)  
Room 7518C William Jefferson Clinton Bldg North  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460  
Tel: 202-564-5476

---

**From:** Brown, Leah  
**Sent:** Tuesday, June 26, 2018 8:41 PM  
**To:** Curtin, James <[curtin.james@epa.gov](mailto:curtin.james@epa.gov)>; Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>; Schroer, Lee <[schroer.lee@epa.gov](mailto:schroer.lee@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>  
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## **Ex. 5 Attorney Client (AC)**

Leah Brown  
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(206) 553-8694  
[brown.leah@epa.gov](mailto:brown.leah@epa.gov)

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**Subject:** Deschutes Bullets for David F

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*Jim*

Jim Curtin  
USEPA Office of General Counsel  
Water Law Office  
202-564-5482  
William Jefferson Clinton North Rm. 7451

**Deschutes TMDL Decision Document:** **Ex. 5 Attorney Client (AC)**

This paper identifies and discusses two legal and programmatic issues presented by Region 10's proposed Deschutes Watershed TMDL decision. EPA is under court order to "complete its action" by June 29, 2018, on the State of Washington's 73 TMDLs, submitted in 2015 and amended in 2017, for bacteria, temperature, DO, pH and fine sediment.

Region 10 and ORC have coordinated closely with OWOW and staff in OGC during the Deschutes TMDL decision process and the drafting of all supporting documents. Additionally, Region 10 has been closely coordinating with the Washington Department of Ecology ("Ecology"). Ecology is aware of EPA's proposed decision, and Region 10 staff met with Ecology staff last week to discuss the potential replacement TMDLs. R10's proposed decision is as follows:

- **Approve 26 TMDLs** for temperature.
- **Disapprove 14 TMDLs** for bacteria because Washington revised their TMDL calculations after submittal w/o providing additional public notice as required by 40 CFR 130.7(c)(1)(ii). R10 found that these TMDLs were otherwise approvable as a technical matter. Ecology is preparing to re-notice these TMDLs soon after EPA's action.
- **Disapprove 23 TMDLs** for temperature, bacteria, DO, pH and fine sediment on a variety of grounds (some in combination). These include (1) TMDL submission lacks required elements, e.g., loading capacity calculations, wasteload allocations and load allocations (130.2; 130.7); (2) TMDL fails to implement Washington's applicable narrative WQS requiring protection of downstream criteria; and (3) the TMDL lacks a clear demonstration showing that the TMDL target is set at a level to implement applicable WQS.
- **Take no action on 10 TMDLs** for bacteria because the waters have been removed from Washington's 303(d) list as no longer impaired.

**Ex. 5 Attorney Client (AC)**

[PAGE \\* MERGEFORMAT]

**Ex. 5 Attorney Client (AC)**

## **Ex. 5 Attorney Client (AC)**

**Ex. 5 Attorney Client (AC)**



Message

**From:** Havard, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9350676809E8403994F1DFC2B7BFDCFE-JHAVARD]  
**Sent:** 6/27/2018 4:35:47 PM  
**To:** Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]  
**Subject:** FW: Deschutes Bullets for David F

John – For your reference on iPhone, here’s the text of the paper. This paper was requested by David F.

**Deschutes TMDL Decision Document: Ex. 5 Attorney Client (AC)**

This paper identifies and discusses: **Ex. 5 Attorney Client (AC)** presented by Region 10’s proposed Deschutes Watershed TMDL decision. EPA is under court order to “complete its action” by June 29, 2018, on the State of Washington’s 73 TMDLs, submitted in 2015 and amended in 2017, for bacteria, temperature, DO, pH and fine sediment. Region 10 and ORC have coordinated closely with OWOW and staff in OGC during the Deschutes TMDL decision process and the drafting of all supporting documents. Additionally, Region 10 has been closely coordinating with Washington Department of Ecology (“Ecology”). Ecology is aware of EPA’s proposed decision, and Region 10 staff met with Ecology staff last week to discuss the potential replacement TMDLs. R10’s proposed decision is as follows:

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- **Take no action on 10 TMDLs** for bacteria because the waters have been removed from Washington’s 303(d) list as no longer impaired.

# Ex. 5 Attorney Client (AC)

# Ex. 5 Attorney Client (AC)

**From:** Neugeboren, Steven

**Sent:** Wednesday, June 27, 2018 12:27 PM

**To:** Curtin, James <curtin.james@epa.gov>

**Cc:** Havard, James <Havard.James@epa.gov>; Schroer, Lee <schroer.lee@epa.gov>; Brown, Leah <Brown.Leah@epa.gov>; Stern, Allyn <Stern.Alyn@epa.gov>; Steiner-Riley, Cara <Steiner-Riley.Cara@epa.gov>; Hodgkiss, Miranda <Hodgkiss.Miranda@epa.gov>; Croxton, David <Croxton.David@epa.gov>; Goodin, John <Goodin.John@epa.gov>

**Subject:** Re: Deschutes Bullets for David F

# Ex. 5 Attorney Client (AC)

Sent from my iPhone

Steven Neugeboren  
Associate General Counsel for Water  
U.S. EPA  
202-564-5488

On Jun 27, 2018, at 12:19 PM, Curtin, James <curtin.james@epa.gov> wrote:

Here is a clean, revised draft of the two-page issues paper OGC is developing for David F. I have done my best to address all comments, which do make this a far better document. I've left in the significant marginal comments for your reference.

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*Jim*

Jim Curtin  
USEPA Office of General Counsel

Water Law Office  
202-564-5482  
William Jefferson Clinton North Rm. 7451

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**Subject:** RE: Deschutes Bullets for David F

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U.S. EPA  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
202 (564-5488)

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I added some comments on Leah's version.

Lee C. Schroer  
Office of General Counsel (Mail Code 2355A)  
Room 7518C William Jefferson Clinton Bldg North  
Environmental Protection Agency  
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Washington, D.C. 20460  
Tel: 202-564-5476

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## Ex. 5 Attorney Client (AC)

[ PAGE \\* MERGEFORMAT ]

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**Ex. 5 Attorney Client (AC)**

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**Ex. 5 Attorney Client (AC)**

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# Ex. 5 Attorney Client (AC)

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Message

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**From:** Havard, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9350676809E8403994F1DFC2B7BFDCFE-JHAVARD]  
**Sent:** 5/17/2018 3:14:58 PM  
**To:** Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]  
**CC:** Wall, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=128011ac603c4d1a82301ada1bdfd733-Twall]; Hunter, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32905162cc58495da107db89c7dea903-Hunter, Chr]; Lewicki, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7688d5b97aa94ba6af2f38984d479b56-CLewicki]  
**Subject:** RE: ACTION BY NOON THURSDAY: Update needed for Note/Paper for Dave Ross/OW-IO re: Deschutes WA TMDLs -- potential disapprovals  
**Attachments:** Deschutes TMDL background 5-15-18.docx

John – Attached is a revised paper (thanks to Chris H for updating the paper). I also edited the note below. Please let me know if you have questions or would like to discuss.

---

**From:** Wall, Tom  
**Sent:** Tuesday, May 15, 2018 1:48 PM  
**To:** Havard, James <Havard.James@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>  
**Cc:** Goodin, John <Goodin.John@epa.gov>  
**Subject:** ACTION BY NOON THURSDAY: Update needed for Note/Paper for Dave Ross/OW-IO re: Deschutes WA TMDLs -- potential disapprovals

John would like us to lightly update the paper and note below to reflect the latest from the court. I'll be on leave Thursday so just cc: me as it goes back to John. Thank you,

Tom Wall, Director  
Watershed Restoration, Assessment and Protection Division  
Office of Wetlands, Oceans and Watersheds  
U.S. EPA  
[Wall.tom@epa.gov](mailto:Wall.tom@epa.gov)  
202/564-4179

---

**From:** Wall, Tom  
**Sent:** Thursday, May 03, 2018 2:31 PM  
**To:** Goodin, John <Goodin.John@epa.gov>; Sandra Connors (<[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)> <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)>  
**Cc:** Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>; Monschein, Eric <[Monschein.Eric@epa.gov](mailto:Monschein.Eric@epa.gov)>; Hunter, Christopher <[Hunter.Christopher@epa.gov](mailto:Hunter.Christopher@epa.gov)>  
**Subject:** Note for Dave Ross/OW-IO re: Deschutes WA TMDLs -- potential disapprovals

John – here is a note and paper you could send to Dave about R10's potential disapproval of a number of the Deschutes WA TMDLs:

---

Dave,

# **Ex. 5 Deliberative Process (DP)**

## Deschutes TMDL & Litigation

### Background

The Deschutes River, Percival Creek, and Budd Inlet Tributaries (Phase 1) TMDL study area is located in south Puget in Thurston and Lewis Counties, Washington. The Washington Department of Ecology submitted the final Phase 1 Deschutes TMDL to EPA for approval on December 17, 2015.<sup>1</sup> That document addresses a total of 73 waterbody-pollutant combinations, involving temperature, dissolved oxygen [DO], pH, fecal coliform, and fine sediment impairments.

### Litigation

On September 6, 2017, Northwest Environmental Advocates (NWEA) filed a complaint against EPA alleging violation of section 303(d)(2) of the Clean Water Act (CWA) for failure to act on the Deschutes River TMDL submission. Section 303(d)(2) requires EPA to either approve or disapprove a state's TMDL submission within 30 days of submittal.

## **Ex. 5 Deliberative Process (DP)**

### Current Status

The CWA requires EPA to either approve or disapprove state-submitted TMDLs, and if we disapprove, we are required to develop a replacement TMDL within 30 days.

### **Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

### Next Steps

A briefing on the proposed TMDL decisions for the RA is currently scheduled for May 21<sup>st</sup>. The AAOW will be given an opportunity to participate in the RA briefing. In addition, the Region will coordinate with HQ OWOW staff on needed background/briefing materials for AAOW. Once final decisions have been made on the TMDL, the Region will need to work quickly with HQ and the State on the disapproved segments to determine how replacement TMDLs will be developed.

---

<sup>1</sup> Marine segments (Phase 2, Budd Inlet) are planned for completion in 2020.

Message

---

**From:** Opalski, Dan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8B5ED6410D934BF699A008A252791A55-OPALSKI, DAN]  
**Sent:** 6/12/2018 5:08:52 PM  
**To:** Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]  
**Subject:** RE: Latest Deschutes Info

Thanks, John. I recall that you were planning to send the materials previously, and have let the RA know that I thought you had done that.

I believe Chris is giving space for Dave to get to the finish line on this "WOTUS week," but I think he was going to check in with Lee. We are continuing to run trap lines with the state in the meantime. Not sure you've heard mention of one of the extra twists (as if we needed another), which is that this package has some added political sensitivity because of the proximity of some of the segments to the state capitol. In particular, for instance, the Deschutes River empties into/becomes a lake that is really a reservoir behind a dam, and it has been popular as a water feature/reflecting pool (<https://des.wa.gov/about/projects-initiatives/capitol-lake/history-capitol-lake>). So we are planning to be extra diligent about a "no surprises" doctrine right up to the governor's office.

---

**From:** Goodin, John  
**Sent:** Tuesday, June 12, 2018 9:59 AM  
**To:** Opalski, Dan <Opalski.Dan@epa.gov>  
**Subject:** RE: Latest Deschutes Info

Thanks, Dan—I forwarded a copy of your briefing materials to Dave and Lee with a short download on your May briefing for Chris. At this point I have not heard whether either have spoken with Chris. I will send the updated summary sheet along today and remind them of the end of month target.

Thanks again,  
John

---

**From:** Opalski, Dan  
**Sent:** Monday, June 11, 2018 1:47 PM  
**To:** Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>  
**Subject:** FW: Latest Deschutes Info

John – FYI. If any thoughts or insights, please let me know if it would be good to talk. Thx.

---

**From:** Opalski, Dan  
**Sent:** Friday, June 8, 2018 11:14 AM  
**To:** Hladick, Christopher <[hladick.christopher@epa.gov](mailto:hladick.christopher@epa.gov)>  
**Cc:** Gahner, Pamela <[gahner.pamela@epa.gov](mailto:gahner.pamela@epa.gov)>  
**Subject:** Latest Deschutes Info

Chris –

Not knowing exactly when/how you may have an opportunity with Lee and Dave, here is an updated version of the briefing paper we did for you, including an updated version of the table that summarizes the action by segment/pollutant. As I mentioned, I believe Dave received copies of the original package we provided to you for your 5/21 briefing.

# **Ex. 5 Deliberative Process (DP)**

Please let me know if you want us to put together anything more/different.

Dan Opalski  
Director  
Office of Water and Watersheds  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101  
206-553-1855  
FAX: 206-553-1280

Message

**From:** Goodin, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3EAC342F280A4B9DB4079C81F66D1913-JGOODIN]  
**Sent:** 4/16/2018 3:23:16 PM  
**To:** Wall, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=128011ac603c4d1a82301ada1bdfd733-Twall]; Connors, Sandra [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cc4f8f838be74de797ba9f894a0bc7b5-SCONNORS]  
**CC:** Katherine Weiler [Weiler.Katherine@epa.gov]  
**Subject:** RE: UPDATE: Deschutes TMDL action timing and status

Thanks, Tom. The last time I raised this issue, Dave was very interested in engaging. Despite the timing for RA briefing, and given the court schedules, seems like we'd want to push up this discussion. I'll start by verbally raising in the ODs brown bag Wednesday (Katherine).

Thanks  
John

---

**From:** Wall, Tom  
**Sent:** Monday, April 16, 2018 11:03 AM  
**To:** Goodin, John <Goodin.John@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>  
**Subject:** UPDATE: Deschutes TMDL action timing and status

John –

## Ex. 5 Deliberative Process (DP)

Good news is the deadline for Region action is now June 29.

Re: content of the Region's action, see note from Dave Croxton below. We'll be working with the Region on their decision document.

## Ex. 5 Deliberative Process (DP)

# Ex. 5 Deliberative Process (DP)

Please let me know if you'd like more information, or would like this note shortened into something to send to the OW-IO.

Tom Wall, Director  
Watershed Restoration, Assessment and Protection Division  
Office of Wetlands, Oceans and Watersheds  
U.S. EPA  
[Wall.tom@epa.gov](mailto:Wall.tom@epa.gov)  
202/564-4179

---

**From:** Croxton, David  
**Sent:** Friday, April 13, 2018 7:24 PM



To: Lewicki, Chris <Lewicki.Chris@epa.gov>; Brown, Leah <Brown.Leah@epa.gov>

Cc: Havard, James <Havard.James@epa.gov>; Monschein, Eric <Monschein.Eric@epa.gov>; Opalski, Dan <Opalski.Dan@epa.gov>; Hodgkiss, Miranda <Hodgkiss.Miranda@epa.gov>

Subject: RE: Question for Croxton and Leah Re: Deschutes TMDLs

Hi-

Miranda and I met with Dan today to discuss process steps and help answer your questions.

The RA is aware of the Deschutes TMDL status.

#### Ex. 5 Deliberative Process (DP)

#### Ex. 5 Deliberative Process (DP)

We have not briefed him on the details of the TMDL yet and would like to be closer to final policy/program decisions before doing so. We plan to share a draft decision document with you and OGC by the week of 4/30. We could also set-up a Division/Office briefing for that week if desired. We want to allow a couple weeks for input by HQ and to sort-out changes. The Region would then be in good position to brief the RA by the last week of May.

We would leave the matter to you and the AA of whether the AA wants to just be in discussion with the RA or have a briefing from the Region. We expect that a formal briefing for both of them will not be needed.

I understand that you may be feeling the need to get information to the AA sooner than the end of May and certainly you have the information from our other briefings.

#### Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

Thanks,  
Dave

Message

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**From:** Goodin, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3EAC342F280A4B9DB4079C81F66D1913-JGOODIN]  
**Sent:** 6/12/2018 5:26:11 PM  
**To:** Ross, David P [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=119cd8b52dd14305a84863124ad6d8a6-Ross, David]; Forsgren, Lee [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a055d7329d5b470fbaa9920ce1b68a7d-Forsgren, D]  
**CC:** Campbell, Ann [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b8c25a0c2fb648b6a947694a8492311e-Campbell, Ann]; Tom Wall [Wall.Tom@epa.gov]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Sandra Connors [Connors.Sandra@epa.gov] [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cc4f8f838be74de797ba9f894a0bc7b5-SCONNORS]  
**Subject:** Deschutes -- Additional Update  
**Attachments:** Enclosure\_ORA 5-21 briefing\_6-8-18 update.docx

DELIBERATIVE

Dave/Lee—we heard from Region 10 that the RA may try to reach out to Lee this week to chat about the RA’s thinking on the WA Deschutes TMDL approvals/disapprovals. I am including an updated version of their chart which summarizes the status and reasoning for each proposed TMDL. I also understand that the Region is focusing additional attention on “no surprises” for the state (up to the Governor’s office) and others, which I understand was one of the places the RA emphasized as important to moving forward here.

Let me know if you’d like anything further and feel free to let us know if/when the RA reaches out to you.

Thanks,  
John

On May 22, 2018, at 2:19 PM, Goodin, John <Goodin.John@epa.gov> wrote:

Afternoon, Dave—as referenced last week, what follows is a quick download on the Deschutes briefing for the R10 RA yesterday, via Branch Chief Jim Havard, who was invited to listen. Ex. 5 Deliberative Process (DP)

**Ex. 5 Deliberative Process (DP)**

Ex. 5 Deliberative Process (DP) A few additional points:

- The RA plans to call you (likely sometime later this week) to discuss the matter
- The RA asked the Regional program to provide a status update to the State of WA (Dept of Ecology and also potentially the Governor’s office) before acting
- The Region, OWOW, and OGC are preparing materials in anticipation of acting by the June 29<sup>th</sup> deadline.

I’ve attached the briefing document used to brief the RA, including a separate attachment in chart form that describes the status of each TMDL, as well as our background summary email below.

Happy to follow-up before or after your call with Chris.  
Thanks,  
John

-----

**From:** Goodin, John  
**Sent:** Thursday, May 17, 2018 6:42 PM  
**To:** Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Cc:** Campbell, Ann <[Campbell.Ann@epa.gov](mailto:Campbell.Ann@epa.gov)>; Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>; Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)>  
**Subject:** Deschutes Update

DELIBERATIVE                      DRAFT

Dave et al.— the following is some updated info on the Deschutes TMDLs and a recommendation on how to engage you for input prior to Region 10 action on the TMDLs by our June 29 deadline.

The court denied our recent motion to stay the case until June 29. OGC is considering options while the Region continues to work on the TMDLs. You previously indicated that you supported our general direction in the case, however, you were interested in the RA's position on potential TMDL disapprovals well before the actual decision is made. Chris H. will be briefed Monday and we'll get this feedback to you immediately thereafter. I also spoke to the R10 Water Division Director and indicated that you'd likely also be interested in the rationale of what TMDLs were candidates for approval, for approval with minor rework, and for disapproval. We'll work with the Region to provide this information in an efficient format. With the RA's views and background info in hand next week, we would be available to brief you or provide the info to you for your review. Recommend that you could then have a call with Chris before the end of May.

## Ex. 5 Deliberative Process (DP)

Let me know if we can do anything further.

Thanks,  
John

-----

### Background

The Deschutes River, Percival Creek, and Budd Inlet Tributaries (Phase 1) TMDL study area is located in south Puget in Thurston and Lewis Counties, Washington. The Washington Department of Ecology submitted the final Phase 1 Deschutes TMDL to EPA for approval on December 17, 2015. That document addresses a total of 73 waterbody-pollutant combinations, involving temperature, dissolved oxygen [DO], pH, fecal coliform, and fine sediment impairments.

### Litigation

On September 6, 2017, Northwest Environmental Advocates (NWEA) filed a complaint against EPA alleging violation of section 303(d)(2) of the Clean Water Act (CWA) for failure to act on the Deschutes River TMDL submission. Section 303(d)(2) requires EPA to either approve or disapprove a state's TMDL submission within 30 days of submittal.

As part of the ongoing litigation, EPA has stated in briefs that we will act on the Deschutes TMDL by June 29, 2018. The judge has denied EPA's motion to stay the case until June 29, but has not yet ruled on the plaintiff's motion for summary judgment, and recommended a consent decree or stipulated entry of judgment to ensure EPA action on the TMDL. OGC is reviewing options while the Region continues work on the TMDL decision.

Current Status

The CWA requires EPA to either approve or disapprove state-submitted TMDLs, and if we disapprove, we are required to develop a replacement TMDL within 30 days:

**Ex. 5 Deliberative Process (DP)**

# **Ex. 5 Deliberative Process (DP)**

<05.21.2018 Deschutes R10 ORA Briefing.docx>

<Enclosure\_ORA 5-21 briefing.docx>

Message

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**From:** Goodin, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3EAC342F280A4B9DB4079C81F66D1913-JGOODIN]  
**Sent:** 6/12/2018 5:00:30 PM  
**To:** Tom Wall [Wall.Tom@epa.gov]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Hunter, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32905162cc58495da107db89c7dea903-Hunter, Chr]  
**Subject:** FW: Latest Deschutes Info

FYI

---

**From:** Goodin, John  
**Sent:** Tuesday, June 12, 2018 12:59 PM  
**To:** Opalski, Dan <Opalski.Dan@epa.gov>  
**Subject:** RE: Latest Deschutes Info

Thanks, Dan—I forwarded a copy of your briefing materials to Dave and Lee with a short download on your May briefing for Chris. At this point I have not heard whether either have spoken with Chris. I will send the updated summary sheet along today and remind them of the end of month target.

Thanks again,  
John

---

**From:** Opalski, Dan  
**Sent:** Monday, June 11, 2018 1:47 PM  
**To:** Goodin, John <Goodin.John@epa.gov>  
**Subject:** FW: Latest Deschutes Info

John – FYI. If any thoughts or insights, please let me know if it would be good to talk. Thx.

---

**From:** Opalski, Dan  
**Sent:** Friday, June 8, 2018 11:14 AM  
**To:** Hladick, Christopher <hladick.christopher@epa.gov>  
**Cc:** Gahner, Pamela <gahner.pamela@epa.gov>  
**Subject:** Latest Deschutes Info

Chris –

Not knowing exactly when/how you may have an opportunity with Lee and Dave, here is an updated version of the briefing paper we did for you, including an updated version of the table that summarizes the action by segment/pollutant. As I mentioned, I believe Dave received copies of the original package we provided to you for your 5/21 briefing.

## Ex. 5 Deliberative Process (DP)

# **Ex. 5 Deliberative Process (DP)**

Please let me know if you want us to put together anything more/different.

Dan Opalski  
Director  
Office of Water and Watersheds  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101  
206-553-1855  
FAX: 206-553-1280

Message

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**From:** Lewicki, Chris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7688D5B97AA94BA6AF2F38984D479B56-CLEWICKI]  
**Sent:** 10/30/2017 4:20:10 PM  
**To:** Brown, Leah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b8e396f718a74d0bb01f1e35b7319572-Rindner, Le]; Arrigoni, Holly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f2316d8d80d844e286449994c7718ccc-Arrigon, Holly]  
**CC:** Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Croxton, Dave [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ca7b9940863640d5b96f4295ea3c9641-Croxton, Dave]; Curtin, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=728048227d024e0cb67932883007a4f9-JCURTIN]  
**Subject:** RE: Deschutes TMDL Paper  
**Attachments:** Deschutes TMDL NOI Briefing\_draft\_10232017\_v2\_JC CLL .docx

Here are a few additional thoughts

Chris Lewicki  
CWA 303(d) Litigation Coordinator  
Watershed Branch  
Office of Wetlands, Oceans and Watersheds  
202-566-1293

*Chris Lewicki*

---

**From:** Brown, Leah  
**Sent:** Monday, October 30, 2017 11:29 AM  
**To:** Curtin, James <curtin.james@epa.gov>; Arrigoni, Holly <Arrigoni.Holly@epa.gov>  
**Cc:** Havard, James <Havard.James@epa.gov>; Lewicki, Chris <Lewicki.Chris@epa.gov>; Croxton, Dave <Croxton.David@epa.gov>  
**Subject:** RE: Deschutes TMDL Paper

I'm available at 9:30 PT/12:30 ET. My day is otherwise completely booked.

---

**From:** Curtin, James  
**Sent:** Monday, October 30, 2017 6:56 AM  
**To:** Arrigoni, Holly <Arrigoni.Holly@epa.gov>; Brown, Leah <Brown.Leah@epa.gov>; Zell, Christopher <zell.christopher@epa.gov>  
**Cc:** Havard, James <Havard.James@epa.gov>; Lewicki, Chris <Lewicki.Chris@epa.gov>  
**Subject:** RE: Deschutes TMDL Paper

I'm generally free all day if you and Leah want to have a call.

**Jim**

Jim Curtin  
USEPA Office of General Counsel  
Water Law Office

202-564-5482

William Jefferson Clinton North Rm. 7451

---

**From:** Arrigoni, Holly

**Sent:** Monday, October 30, 2017 9:11 AM

**To:** Curtin, James <[curtin.james@epa.gov](mailto:curtin.james@epa.gov)>; Brown, Leah <[Brown.Leah@epa.gov](mailto:Brown.Leah@epa.gov)>; Zell, Christopher <[zell.christopher@epa.gov](mailto:zell.christopher@epa.gov)>

**Cc:** Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>; Lewicki, Chris <[Lewicki.Chris@epa.gov](mailto:Lewicki.Chris@epa.gov)>

**Subject:** RE: Deschutes TMDL Paper

Thanks Jim,

Unfortunately Chris is on leave all week - I told him I would work with Leah on revisions. Should the 3 of us discuss? I am free all day. Leah, let me know how you would like to proceed.

Holly

Holly Arrigoni  
U.S. Environmental Protection Agency  
Office of Wetlands, Oceans, and Watersheds  
Watershed Branch (4503T)  
Phone: 202-564-4781

---

**From:** Curtin, James

**Sent:** Friday, October 27, 2017 4:38 PM

**To:** Brown, Leah <[Brown.Leah@epa.gov](mailto:Brown.Leah@epa.gov)>; Zell, Christopher <[zell.christopher@epa.gov](mailto:zell.christopher@epa.gov)>

**Cc:** Arrigoni, Holly <[Arrigoni.Holly@epa.gov](mailto:Arrigoni.Holly@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>; Lewicki, Chris <[Lewicki.Chris@epa.gov](mailto:Lewicki.Chris@epa.gov)>

**Subject:** Deschutes TMDL Paper

Hi Leah and Chris,

Attached are my (hopefully not too repetitive) comments. They should be fairly self-explanatory.

## Ex. 5 Attorney Client (AC)

As it stands, this is a useful introduction to the issues but not the kind of in depth policy and litigation risk assessment that I think the senior managers will need. Sorry to send you back to the drawing boards, but I just think they'll need and want more.

I'm happy to discuss my comments and the paper in greater detail on Monday

*Jim*

Jim Curtin  
USEPA Office of General Counsel  
Water Law Office



202-564-5482

William Jefferson Clinton North Rm. 7451



## Region 10 Briefing Paper for the Office of the Regional Administrator

### MEETING/EVENT TITLE:

*"Deschutes TMDL Notice of Intent from Northwest Environmental Advocates – How to Respond"*

MEETING DATE: 11/7/2017 10:00 am – 10:45 am

LOCATION: Dan's Office

CONFERENCE CALL LINE: **Ex. 6 Personal Privacy (PP)**

PREPARED BY: Chris Zell and Leah Brown

DATE: 10/19/2017

INVITED EPA ATTENDEES: Dan Opalski; Jim Havard; Jim Curtin; Holly Arrigoni; Chris Lewicki; Dave Croxton; Laurie Mann; Leah Brown; Jennifer Byrne; Cara Steiner-Riley; and Chris Zell

**Ex. 5 Deliberative Process (DP)**

### I. REQUESTING OFFICE

Office of Water and Watersheds / Watershed Unit

### II. TIMING

On August 23, 2017, NWEA provided a Notice of Intent (NOI) to sue EPA under the Clean Water Act (CWA) for failure to perform the mandatory duty of approving or disapproving the Deschutes River TMDL within the statutorily mandated 30-day timeframe. NWEA may file suit 60 days from NOI submittal (~ October 22, 2017). Based on preliminary conversations with NWEA on 10/13/2017, we understand that NWEA intends to file soon after the 60-day NOI period expires.

### III. PURPOSE

- Provide HQ (Watershed Branch) a summary snapshot of the Deschutes TMDL and administrative history
- Share outcomes from informal NWEA conversations held with Ecology on 10/13/2017

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Attorney Client (AC)**

### IV. BACKGROUND/HISTORY

The Deschutes River, Percival Creek, and Budd Inlet Tributaries (Phase 1) TMDL study area (186 mi<sup>2</sup>) is located in south Puget Sound and is situated within the boundaries of Thurston and Lewis Counties, Washington. The study area includes the major cities or towns of Olympia, Lacey, Tumwater, and Rainier.

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)****Ex. 5 Deliberative Process (DP)**

Ecology submitted the freshwater (Phase 1) Deschutes TMDL to EPA for approval on December 17, 2015. Marine segments (Phase 2, Budd Inlet) are planned for completion in 2020.

The submitted 2015 TMDL package included a request that EPA approve allocations for 73 Water Quality Limited Segments (WQLSs) impaired by five pollutants (temperature, dissolved oxygen [DO], pH, fecal coliform, and fine sediment).

**Ex. 5 Deliberative Process (DP)****Ex. 5 Deliberative Process (DP)****Ex. 5 Attorney Client (AC)****Ex. 5 Deliberative Process (DP)****Ex. 5 Attorney Client (AC)**

# Ex. 5 Deliberative Process (DP)

**Deschutes (WA) TMDL Key Dates**

Dates	Event
2004	Sampling Plan Completed
2003 - 2007	Monitoring
2007 - 2014	TMDL Development
April 2014	Announcement to Submit Freshwater Components Only
December 2015	Ecology Submitted TMDL to EPA
February - October 2016	EPA Concerns Shared with Ecology
June 2016	Ecology Hosted Squaxin Island Tribe – Tribal Coordination Meeting
August 2016	EPA/Ecology Discussion with NWEA in Portland, OR
<b>Ex. 5 Deliberative Process (DP)</b>	
January 2017	EPA Received Puget Sound FOIA from NWEA
March 2017	EPA Developed Bacteria TMDLs
June 2017	EPA & Ecology Negotiate "Resubmit" Letter
July 2017	EPA Received Resubmit Letter from Ecology
<b>Ex. 5 Deliberative Process (DP)</b>	

August 2017	EPA Received Deschutes NOI from NWEA
<b>Ex. 5 Deliberative Process (DP)</b>	
October 13, 2017	EPA Region 10 Discussion with NWEA, re: NOI

#### V. KEY ISSUES

## Ex. 5 Deliberative Process (DP)

- NWEA provided a mandatory duty NOI on August 23, 2017
- A conversation with NWEA on October 13, 2017 indicates the July 2017 resubmittal letter will not deter litigation

## Ex. 5 Deliberative Process (DP)

#### VI. ADDITIONAL POLICY AND LEGAL INFORMATION

Section 303(d)(2) of the CWA requires EPA to "either approve or disapprove [a TMDL] not later than thirty days after the date of submission." If EPA disapproves a TMDL, Section 303(d)(2) requires EPA to issue a substitute TMDL within 30 days of disapproval.

## Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Attorney Client (AC)

**Ex. 5 Attorney Client (AC)**

**Ex. 5 Deliberative Process (DP)**

# **Ex. 5 Deliberative Process (DP)**

# Ex. 5 Deliberative Process (DP)

Ex. 5 Attorney Client (AC)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

# Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Attorney Client (AC)

Ex. 5 Deliberative Process (DP)

Ex. 5 Attorney Client (AC)

Ex. 5 Deliberative Process (DP)

Ex. 5 Attorney Client (AC)

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Attorney Client (AC)**

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**



## **Ex. 5 Deliberative Process (DP)**

## Appointment

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**From:** Gahner, Pamela [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1124DF96CE2C40BAB3557B5857BCC87D-GAHNER, PAM]  
**Sent:** 5/18/2018 4:53:06 PM  
**To:** Opalski, Dan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8b5ed6410d934bf699a008a252791a55-Opalski, Dan]; Brown, Leah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b8e396f718a74d0bb01f1e35b7319572-Rindner, Le]; Croxton, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ca7b9940863640d5b96f4295ea3c9641-Croxton, Dave]; Mann, Laurie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=91d9977275924e7b80a6751941c1c3b7-Mann, Laurie]; Hodgkiss, Miranda [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9d441ddb44ac4ed486058d2c2690b977-Hodgkiss, Miranda]; Zell, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a7206bbb71ff41c999629b86cc25c7e4-Zell, Chris]  
**CC:** Steiner-Riley, Cara [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bef7d04f2e64e4b8b90235a30cc7109-Steiner-Riley, Cara]; Stern, Allyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2e2d6f5df08d4e9abbff2c0880407775-Stern, Allyn]; Chung, Angela [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b3e49fcb1ad46f1bdbe92ebb4936350-Chung, Angela]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Curtin, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=728048227d024e0cb67932883007a4f9-JCURTIN]  
**Subject:** Deschutes TMDL Brief for the RA  
**Attachments:** Deschutes TMDL Briefing with RA  
**Location:** ET Conference Room, Conf Line: Ex. 6 Personal Privacy (PP)  
**Start:** 5/21/2018 5:00:00 PM  
**End:** 5/21/2018 6:00:00 PM  
**Show Time As:** Tentative

## Appointment

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**From:** Havard, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9350676809E8403994F1DFC2B7BFDCFE-JHAVARD]  
**Sent:** 11/20/2017 3:55:24 PM  
**To:** Zell, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a7206bbb71ff41c999629b86cc25c7e4-Zell, Chris]  
**Subject:** Accepted: INTERNAL and DELIBERATIVE - Deschutes Decision Rationale #1 - Please hold time  
**Location:** Conference Line **Ex. 6 Personal Privacy (PP)**  
**Start:** 11/20/2017 6:30:00 PM  
**End:** 11/20/2017 7:30:00 PM  
**Show Time As:** Busy

## Appointment

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**From:** Croxton, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CA7B9940863640D5B96F4295EA3C9641-CROXTON, DAVE]  
**Sent:** 2/9/2018 5:41:35 PM  
**To:** Zell, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a7206bbb71ff41c999629b86cc25c7e4-Zell, Chris]; Hodgkiss, Miranda [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9d441ddb44ac4ed486058d2c2690b977-Hodgkiss, Miranda]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Curtin, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=728048227d024e0cb67932883007a4f9-JCURTIN]; Lewicki, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7688d5b97aa94ba6af2f38984d479b56-CLewicki]; Hunter, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32905162cc58495da107db89c7dea903-Hunter, Chr]; Brown, Leah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b8e396f718a74d0bb01f1e35b7319572-Rindner, Le]  
**Subject:** Deschutes TMDL review  
**Location:** conference # Ex. 6 Personal Privacy (PP)  
**Start:** 2/22/2018 8:30:00 PM  
**End:** 2/22/2018 10:00:00 PM  
**Show Time As:** Tentative

## Appointment

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**From:** Havard, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9350676809E8403994F1DFC2B7BFDCFE-JHAVARD]  
**Sent:** 10/23/2017 3:22:10 PM  
**To:** Zell, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a7206bbb71ff41c999629b86cc25c7e4-Zell, Chris]  
**Subject:** Accepted: Deschutes TMDL NOI, pre-DRA brief  
**Location:** Dave's Office and Conference Line Ex. 6 Personal Privacy (PP)  
**Start:** 10/23/2017 6:30:00 PM  
**End:** 10/23/2017 7:30:00 PM  
**Show Time As:** Busy

## Appointment

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**From:** Havard, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9350676809E8403994F1DFC2B7BFDCFE-JHAVARD]  
**Sent:** 10/23/2017 3:39:10 PM  
**To:** Lewicki, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7688d5b97aa94ba6af2f38984d479b56-CLewicki]  
**Subject:** FW: Deschutes TMDL NOI, pre-DRA brief  
**Location:** Dave's Office and Conference Line **Ex. 6 Personal Privacy (PP)**  
**Start:** 10/23/2017 6:30:00 PM  
**End:** 10/23/2017 7:30:00 PM  
**Show Time As:** Tentative

## Appointment

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**From:** Zell, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A7206BBB71FF41C999629B86CC25C7E4-ZELL, CHRIS]  
**Sent:** 10/16/2017 3:38:50 PM  
**To:** Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Croxton, Dave [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ca7b9940863640d5b96f4295ea3c9641-Croxton, Dave]; Curtin, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=728048227d024e0cb67932883007a4f9-JCURTIN]; Brown, Leah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b8e396f718a74d0bb01f1e35b7319572-Rindner, Le]; Arrigoni, Holly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f2316d8d80d844e286449994c7718ccc-Arrigon, Holly]  
**Subject:** Deschutes TMDL NOI, pre-DRA brief  
**Location:** Dave's Office and Conference Line **Ex. 6 Personal Privacy (PP)**  
**Start:** 10/23/2017 6:30:00 PM  
**End:** 10/23/2017 7:30:00 PM  
**Show Time As:** Tentative

## Appointment

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**From:** Zell, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A7206BBB71FF41C999629B86CC25C7E4-ZELL, CHRIS]  
**Sent:** 11/13/2017 3:08:14 PM  
**To:** Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Curtin, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=728048227d024e0cb67932883007a4f9-JCURTIN]; Brown, Leah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b8e396f718a74d0bb01f1e35b7319572-Rindner, Le]; Croxton, Dave [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ca7b9940863640d5b96f4295ea3c9641-Croxton, Dave]  
**Subject:** INTERNAL and DELIBERATIVE - Deschutes Decision Rationale #1 - Please hold time  
**Location:** Conference Line **Ex. 6 Personal Privacy (PP)**  
**Start:** 11/20/2017 6:30:00 PM  
**End:** 11/20/2017 7:30:00 PM  
**Show Time As:** Tentative



## Appointment

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**From:** Zell, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A7206BBB71FF41C999629B86CC25C7E4-ZELL, CHRIS]  
**Sent:** 10/25/2017 11:47:39 PM  
**To:** Lewicki, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7688d5b97aa94ba6af2f38984d479b56-CLewicki]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Arrigoni, Holly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f2316d8d80d844e286449994c7718ccc-Arrigon, Holly]; Curtin, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=728048227d024e0cb67932883007a4f9-JCURTIN]; Brown, Leah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b8e396f718a74d0bb01f1e35b7319572-Rindner, Le]; Croxton, Dave [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ca7b9940863640d5b96f4295ea3c9641-Croxton, Dave]  
**Subject:** Canceled: HOLD TIME - Deschutes Check-In if Needed  
**Location:** Conf line: Ex. 6 Personal Privacy (PP)  
**Start:** 10/26/2017 3:30:00 PM  
**End:** 10/26/2017 4:00:00 PM  
**Show Time As:** Free  
**Importance:** High

## Appointment

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**From:** Erikson, Linda [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=216310F1976841B78EDC0F6E41FABB90-ERIKSON, LI]  
**Sent:** 11/2/2017 9:43:39 PM  
**To:** Zell, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a7206bbb71ff41c999629b86cc25c7e4-Zell, Chris]; Croxton, Dave [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ca7b9940863640d5b96f4295ea3c9641-Croxton, Dave]; Brown, Leah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b8e396f718a74d0bb01f1e35b7319572-Rindner, Le]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Curtin, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=728048227d024e0cb67932883007a4f9-JCURTIN]; Arrigoni, Holly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f2316d8d80d844e286449994c7718ccc-Arrigon, Holly]; Lewicki, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7688d5b97aa94ba6af2f38984d479b56-CLewicki]  
**CC:** Mann, Laurie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=91d9977275924e7b80a6751941c1c3b7-Mann, Laurie]; Byrne, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=de322666c427446dac7d04a606afd702-Byrne, Jennifer]; Steiner-Riley, Cara [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bef7d04f2e64e4b8b90235a30cc7109-Steiner-Riley, Cara]  
**Subject:** Responding to Deschutes Watershed Total Maximum Daily Load (TMDL) Notice of Intent (NOI) from Northwest Environmental Advocates (NWEA)  
**Location:** Dan's Office in R10, Conference Line: **Ex. 6 Personal Privacy (PP)**  
**Start:** 11/7/2017 6:00:00 PM  
**End:** 11/7/2017 6:45:00 PM  
**Show Time As:** Tentative

## Appointment

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**From:** Zell, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A7206BBB71FF41C999629B86CC25C7E4-ZELL, CHRIS]  
**Sent:** 11/13/2017 3:08:16 PM  
**To:** Zell, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a7206bbb71ff41c999629b86cc25c7e4-Zell, Chris]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Curtin, James [curtin.james@epa.gov]; Brown, Leah [Brown.Leah@epa.gov]; Croxton, Dave [Croxton.David@epa.gov]  
**CC:** Arrigoni, Holly [Arrigoni.Holly@epa.gov]; Monschein, Eric [Monschein.Eric@epa.gov]  
**Subject:** INTERNAL and DELIBERATIVE - Deschutes Decision Rationale #1 - Please hold time  
**Location:** Conference Line: **Ex. 6 Personal Privacy (PP)**  
**Start:** 11/20/2017 6:30:00 PM  
**End:** 11/20/2017 7:30:00 PM  
**Show Time As:** Busy

## Appointment

---

**From:** Croxton, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CA7B9940863640D5B96F4295EA3C9641-CROXTON, DAVE]  
**Sent:** 2/9/2018 12:59:11 AM  
**To:** Croxton, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ca7b9940863640d5b96f4295ea3c9641-Croxton, Dave]; Zell, Christopher [zell.christopher@epa.gov]; Hodgkiss, Miranda [Hodgkiss.Miranda@epa.gov]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Curtin, James [curtin.james@epa.gov]; Lewicki, Chris [Lewicki.Chris@epa.gov]; Brown, Leah [Brown.Leah@epa.gov]; Hunter, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32905162cc58495da107db89c7dea903-Hunter, Chr]  
**CC:** Mann, Laurie [mann.laurie@epa.gov]; Steiner-Riley, Cara [Steiner-Riley.Cara@epa.gov]  
**Subject:** Deschutes TMDL review  
**Location:** conference #; **Ex. 6 Personal Privacy (PP)**  
**Start:** 2/22/2018 8:30:00 PM  
**End:** 2/22/2018 10:00:00 PM  
**Show Time As:** Busy

## Appointment

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**From:** Zell, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A7206BBB71FF41C999629B86CC25C7E4-ZELL, CHRIS]  
**Sent:** 10/23/2017 8:05:43 PM  
**To:** Zell, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a7206bbb71ff41c999629b86cc25c7e4-Zell, Chris]; Lewicki, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7688d5b97aa94ba6af2f38984d479b56-CLewicki]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Arrigoni, Holly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f2316d8d80d844e286449994c7718ccc-Arrigon, Holly]; Curtin, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=728048227d024e0cb67932883007a4f9-JCURTIN]; Brown, Leah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b8e396f718a74d0bb01f1e35b7319572-Rindner, Le]; Croxton, Dave [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ca7b9940863640d5b96f4295ea3c9641-Croxton, Dave]  
**Subject:** Canceled: HOLD TIME - Deschutes Check-In if Needed  
**Location:** Conf line: **Ex. 6 Personal Privacy (PP)**  
**Start:** 10/26/2017 3:30:00 PM  
**End:** 10/26/2017 4:00:00 PM  
**Show Time As:** Free  
**Importance:** High

## Appointment

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**From:** Zell, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A7206BBB71FF41C999629B86CC25C7E4-ZELL, CHRIS]  
**Sent:** 10/16/2017 3:38:52 PM  
**To:** Zell, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a7206bbb71ff41c999629b86cc25c7e4-Zell, Chris]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Croxton, Dave [Croxton.David@epa.gov]; Curtin, James [curtin.james@epa.gov]; Brown, Leah [Brown.Leah@epa.gov]; Arrigoni, Holly [Arrigoni.Holly@epa.gov]  
**CC:** Lewicki, Chris [Lewicki.Chris@epa.gov]  
**Subject:** Deschutes TMDL NOI, pre-DRA brief  
**Location:** Dave's Office and Conference Line **Ex. 6 Personal Privacy (PP)**  
**Start:** 10/23/2017 6:30:00 PM  
**End:** 10/23/2017 7:30:00 PM  
**Show Time As:** Busy

## Appointment

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**From:** Opalski, Dan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8B5ED6410D934BF699A008A252791A55-OPALSKI, DAN]  
**Sent:** 10/10/2017 9:01:31 PM  
**To:** Opalski, Dan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8b5ed6410d934bf699a008a252791a55-Opalski, Dan]; Zell, Christopher [zell.christopher@epa.gov]; Croxton, Dave [Croxton.David@epa.gov]; Brown, Leah [Brown.Leah@epa.gov]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Curtin, James [curtin.james@epa.gov]; Arrigoni, Holly [Arrigoni.Holly@epa.gov]; Lewicki, Chris [Lewicki.Chris@epa.gov]  
**CC:** Mann, Laurie [mann.laurie@epa.gov]; Byrne, Jennifer [Byrne.Jennifer@epa.gov]; Steiner-Riley, Cara [Steiner-Riley.Cara@epa.gov]; Schroer, Lee [schroer.lee@epa.gov]; Chung, Angela [Chung.Angela@epa.gov]; Lidgard, Michael [Lidgard.Michael@epa.gov]; Stern, Allyn [Stern.Allyn@epa.gov]  
**Subject:** Responding to Deschutes Watershed Total Maximum Daily Load (TMDL) Notice of Intent (NOI) from Northwest Environmental Advocates (NWEA)  
**Location:** Dan's Office in R10, Conference Line: **Ex. 6 Personal Privacy (PP)**  
**Start:** 11/7/2017 6:00:00 PM  
**End:** 11/7/2017 6:45:00 PM  
**Show Time As:** Busy

## Appointment

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**From:** Zell, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A7206BBB71FF41C999629B86CC25C7E4-ZELL, CHRIS]  
**Sent:** 11/13/2017 3:08:16 PM  
**To:** Zell, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a7206bbb71ff41c999629b86cc25c7e4-Zell, Chris]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcf-JHAVARD]; Curtin, James [curtin.james@epa.gov]; Brown, Leah [Brown.Leah@epa.gov]; Croxton, Dave [Croxton.David@epa.gov]  
**CC:** Arrigoni, Holly [Arrigoni.Holly@epa.gov]; Monschein, Eric [Monschein.Eric@epa.gov]  
**Subject:** INTERNAL and DELIBERATIVE - Deschutes Decision Rationale #1 - Please hold time  
**Location:** Conference Line: **Ex. 6 Personal Privacy (PP)**  
**Start:** 11/20/2017 6:30:00 PM  
**End:** 11/20/2017 7:30:00 PM  
**Show Time As:** Busy

Hi Folks,

The purpose of this meeting is to begin mapping our decision rationale for the Deschutes TMDL in Washington per action items / next steps identified in our briefing with Dan Opalski.

Best,

Chris



## Appointment

---

**From:** Opalski, Dan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8B5ED6410D934BF699A008A252791A55-OPALSKI, DAN]  
**Sent:** 10/10/2017 9:01:31 PM  
**To:** Opalski, Dan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8b5ed6410d934bf699a008a252791a55-Opalski, Dan]; Zell, Christopher [zell.christopher@epa.gov]; Croxton, Dave [Croxton.David@epa.gov]; Brown, Leah [Brown.Leah@epa.gov]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Curtin, James [curtin.james@epa.gov]; Arrigoni, Holly [Arrigoni.Holly@epa.gov]; Lewicki, Chris [Lewicki.Chris@epa.gov]  
**CC:** Mann, Laurie [mann.laurie@epa.gov]; Byrne, Jennifer [Byrne.Jennifer@epa.gov]; Steiner-Riley, Cara [Steiner-Riley.Cara@epa.gov]; Schroer, Lee [schroer.lee@epa.gov]; Chung, Angela [Chung.Angela@epa.gov]; Lidgard, Michael [Lidgard.Michael@epa.gov]; Stern, Allyn [Stern.Allyn@epa.gov]  
**Subject:** Responding to Deschutes Watershed Total Maximum Daily Load (TMDL) Notice of Intent (NOI) from Northwest Environmental Advocates (NWEA)  
**Attachments:** Deschutes TMDL\_NOI\_R10 ORA Meeting or Event Request Form.docx; Deschutes TMDL NOI Briefing\_Final.docx  
**Location:** Dan's Office in R10, Conference Line: Ex. 6 Personal Privacy (PP)  
**Start:** 11/7/2017 6:00:00 PM  
**End:** 11/7/2017 6:45:00 PM  
**Show Time As:** Busy

POC: Christopher Zell

## Appointment

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**From:** Zell, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A7206BBB71FF41C999629B86CC25C7E4-ZELL, CHRIS]  
**Sent:** 10/23/2017 8:05:43 PM  
**To:** Zell, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a7206bbb71ff41c999629b86cc25c7e4-Zell, Chris]; Lewicki, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7688d5b97aa94ba6af2f38984d479b56-CLewicki]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Arrigoni, Holly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f2316d8d80d844e286449994c7718ccc-Arrigon, Holly]; Curtin, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=728048227d024e0cb67932883007a4f9-JCURTIN]; Brown, Leah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b8e396f718a74d0bb01f1e35b7319572-Rindner, Le]; Croxton, Dave [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ca7b9940863640d5b96f4295ea3c9641-Croxton, Dave]  
**Subject:** Canceled: HOLD TIME - Deschutes Check-In if Needed  
**Location:** Conf line: **Ex. 6 Personal Privacy (PP)**  
**Start:** 10/26/2017 3:30:00 PM  
**End:** 10/26/2017 4:00:00 PM  
**Show Time As:** Free  
**Importance:** High

I am hearing from folks this meeting is not needed – so enjoy 30 minutes you didn't think you had and...have a wonderful weekend.

-Chris

## Appointment

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**From:** Zell, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A7206BBB71FF41C999629B86CC25C7E4-ZELL, CHRIS]  
**Sent:** 10/16/2017 3:38:52 PM  
**To:** Zell, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a7206bbb71ff41c999629b86cc25c7e4-Zell, Chris]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Croxton, Dave [Croxton.David@epa.gov]; Curtin, James [curtin.james@epa.gov]; Brown, Leah [Brown.Leah@epa.gov]; Arrigoni, Holly [Arrigoni.Holly@epa.gov]  
**CC:** Lewicki, Chris [Lewicki.Chris@epa.gov]  
**Subject:** Deschutes TMDL NOI, pre-DRA brief  
**Location:** Dave's Office and Conference Line **Ex. 6 Personal Privacy (PP)**  
**Start:** 10/23/2017 6:30:00 PM  
**End:** 10/23/2017 7:30:00 PM  
**Show Time As:** Busy

As time with our DRA will be short (~45 min) on 11/7, I thought it made sense to schedule a pre-brief with our Branch partners to respond to any questions and share information from recent discussions with NWEA.

Thank you,

Chris

## Appointment

---

**From:** Croxton, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CA7B9940863640D5B96F4295EA3C9641-CROXTON, DAVE]  
**Sent:** 2/9/2018 12:59:11 AM  
**To:** Croxton, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ca7b9940863640d5b96f4295ea3c9641-Croxton, Dave]; Zell, Christopher [zell.christopher@epa.gov]; Hodgkiss, Miranda [Hodgkiss.Miranda@epa.gov]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Curtin, James [curtin.james@epa.gov]; Lewicki, Chris [Lewicki.Chris@epa.gov]; Brown, Leah [Brown.Leah@epa.gov]; Hunter, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32905162cc58495da107db89c7dea903-Hunter, Chr]  
**CC:** Mann, Laurie [mann.laurie@epa.gov]; Steiner-Riley, Cara [Steiner-Riley.Cara@epa.gov]  
**Subject:** Deschutes TMDL review  
**Location:** conference #; **Ex. 6 Personal Privacy (PP)**  
**Start:** 2/22/2018 8:30:00 PM  
**End:** 2/22/2018 10:00:00 PM  
**Show Time As:** Busy

Message

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**From:** Lewicki, Chris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7688D5B97AA94BA6AF2F38984D479B56-CLEWICKI]  
**Sent:** 6/25/2018 2:32:57 PM  
**To:** Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Hunter, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32905162cc58495da107db89c7dea903-Hunter, Chr]  
**Subject:** RE: Deschutes TP?

I'm thinking your suggestions in yellow may be better as TPs rather than background.

---

**From:** Havard, James  
**Sent:** Monday, June 25, 2018 10:23 AM  
**To:** Hunter, Christopher <Hunter.Christopher@epa.gov>; Lewicki, Chris <Lewicki.Chris@epa.gov>  
**Subject:** RE: Deschutes TP?

Yes, thanks! Do my additions look ok? I'll send up as soon as I hear back from you.

---

**From:** Hunter, Christopher  
**Sent:** Monday, June 25, 2018 10:11 AM  
**To:** Lewicki, Chris <Lewicki.Chris@epa.gov>; Havard, James <Havard.James@epa.gov>  
**Subject:** Deschutes TP?

Jim and Chris,

Do you think we need a TP for Deschutes this week since the deadline for acting is Friday? As far as I know, nothing has changed since our last update (below) nor has anyone heard of a discussion between the RA and AAOW, but I thought we might send one up just in case there are any last-minute questions.

#### Status of R10's forthcoming Action on Deschutes TMDLs

- Region 10 plans to act on Oregon's Deschutes TMDL submission by this Friday (June 29<sup>th</sup>), the date that EPA committed to in briefs filed with the court.

## Ex. 5 Deliberative Process (DP)

- R10 program staff briefed the RA on the proposed actions in May.

#### Deschutes TMDL Background

- The Washington Department of Ecology submitted the final Phase 1 Deschutes TMDL to EPA for approval on December 17, 2015. That document addresses a total of 73 waterbody-pollutant combinations, involving temperature, dissolved oxygen [DO], pH, fecal coliform, and fine sediment impairments. The Deschutes River, Percival Creek, and Budd Inlet Tributaries (Phase 1) TMDL study area is located in south Puget in Thurston and Lewis Counties, Washington.
- On September 6, 2017, Northwest Environmental Advocates (NWEA) filed a complaint against EPA alleging violation of section 303(d)(2) of the Clean Water Act (CWA) for failure to act on the Deschutes River TMDL submission. Section 303(d)(2) requires EPA to either approve or disapprove a state's TMDL submission within 30 days of submittal.

- As part of the ongoing litigation, EPA has stated in briefs that we will act on the Deschutes TMDL by June 29, 2018. The judge has denied EPA's motion to stay the case until June 29, but has not yet ruled on the plaintiff's motion for summary judgment, and recommended a consent decree or stipulated entry of judgment to ensure EPA action on the TMDL.
- We understand the RA had planned to reach out to Dave Ross on his plan to move forward with this action. As far we know, this has not happened yet.
- Staff in OGC and OWOW have reviewed the draft decision document.

Message

---

**From:** Hunter, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=32905162CC58495DA107DB89C7DEA903-HUNTER, CHR]  
**Sent:** 6/25/2018 2:27:41 PM  
**To:** Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Lewicki, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7688d5b97aa94ba6af2f38984d479b56-CLewicki]  
**Subject:** RE: Deschutes TP?

Looks good, thanks

Chris Hunter  
202.566.1454  
Watershed Branch, Office of Water  
US Environmental Protection Agency

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**From:** Havard, James  
**Sent:** Monday, June 25, 2018 10:23 AM  
**To:** Hunter, Christopher <Hunter.Christopher@epa.gov>; Lewicki, Chris <Lewicki.Chris@epa.gov>  
**Subject:** RE: Deschutes TP?

Yes, thanks! Do my additions look ok? I'll send up as soon as I hear back from you.

---

**From:** Hunter, Christopher  
**Sent:** Monday, June 25, 2018 10:11 AM  
**To:** Lewicki, Chris <Lewicki.Chris@epa.gov>; Havard, James <Havard.James@epa.gov>  
**Subject:** Deschutes TP?

Jim and Chris,

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- We understand the RA had planned to reach out to Dave Ross on his plan to move forward with this action. As far we know, this has not happened yet.
- Staff in OGC and OWOW have reviewed the draft decision document.



**From:** Hunter, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=32905162CC58495DA107DB89C7DEA903-HUNTER, CHR]  
**Sent:** 6/25/2018 2:10:50 PM  
**To:** Lewicki, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7688d5b97aa94ba6af2f38984d479b56-CLewicki]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]  
**Subject:** Deschutes TP?

Jim and Chris,

Do you think we need a TP for Deschutes this week since the deadline for acting is Friday? As far as I know, nothing has changed since our last update (below) nor has anyone heard of a discussion between the RA and AAOW, but I thought we might send one up just in case there are any last-minute questions.

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## **Ex. 5 Deliberative Process (DP)**

- R10 program staff briefed the RA on the proposed actions in May.

#### Deschutes TMDL Background

- The Washington Department of Ecology submitted the final Phase 1 Deschutes TMDL to EPA for approval on December 17, 2015. That document addresses a total of 73 waterbody-pollutant combinations, involving temperature, dissolved oxygen [DO], pH, fecal coliform, and fine sediment impairments. The Deschutes River, Percival Creek, and Budd Inlet Tributaries (Phase 1) TMDL study area is located in south Puget in Thurston and Lewis Counties, Washington.
- On September 6, 2017, Northwest Environmental Advocates (NWEA) filed a complaint against EPA alleging violation of section 303(d)(2) of the Clean Water Act (CWA) for failure to act on the Deschutes River TMDL submission. Section 303(d)(2) requires EPA to either approve or disapprove a state's TMDL submission within 30 days of submittal.
- As part of the ongoing litigation, EPA has stated in briefs that we will act on the Deschutes TMDL by June 29, 2018. The judge has denied EPA's motion to stay the case until June 29, but has not yet ruled on the plaintiff's motion for summary judgment, and recommended a consent decree or stipulated entry of judgment to ensure EPA action on the TMDL.

Message

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**From:** Wall, Tom [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=128011AC603C4D1A82301ADA1BDFD733-TWALL]  
**Sent:** 5/1/2018 6:22:46 PM  
**To:** Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]  
**CC:** Hunter, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32905162cc58495da107db89c7dea903-Hunter, Chr]; Monschein, Eric [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=110281a30e814820830c14fa5075ff90-EMonsche]; Lewicki, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7688d5b97aa94ba6af2f38984d479b56-CLewicki]  
**Subject:** RE: Deschutes paper  
**Attachments:** Deschutes TMDL background 5-01+tw.docx

Thank you, some very minor edits in the attached version (sorry, didn't use redline)

How does look for text for a cover email:

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Dave/Lee/Benita

## Ex. 5 Deliberative Process (DP)

We understand the RA is generally aware of this issue but is not scheduled to be briefed in detail by Region 10 staff on their recommendations until late May, which that means there won't be much time for interaction with the Region before the June 29 deadline. Thus, in the event Dave may wish to talk to the RA sooner, we prepared the attached paper to provide more background information on the issue and the reasons for the potential disapprovals. Dave may wish to review the paper and call the RA?

We can provide additional information if that would be helpful.

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202/564-4179

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**From:** Havard, James  
**Sent:** Tuesday, May 01, 2018 9:58 AM  
**To:** Wall, Tom <Wall.Tom@epa.gov>  
**Cc:** Hunter, Christopher <Hunter.Christopher@epa.gov>; Monschein, Eric <Monschein.Eric@epa.gov>; Lewicki, Chris <Lewicki.Chris@epa.gov>  
**Subject:** Deschutes paper

Hi Tom –

John had asked for a Deschutes update paper this week. Thanks to Chris Hunter, who prepared the attached draft. Can you take a look/send on to John? Thanks!

Jim

Message

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**From:** Hodgkiss, Miranda [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9D441DDB44AC4ED486058D2C2690B977-HODGKISS, MIRANDA]  
**Sent:** 6/11/2018 8:37:02 PM  
**To:** Hunter, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32905162cc58495da107db89c7dea903-Hunter, Chr]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]  
**Subject:** RE: Deschutes draft decision document revision

Hello,

Let me know if you still can't get to it and I will try to troubleshoot – though I just went in and it looks like Jim is editing, so maybe you were able to open it after all?

Also, did you all have a chance to meet today? It looks like Jim C. reviewed the revisions over the weekend (I hope to look at his feedback tomorrow). I'd like to start routing this for concurrence no later than Thursday, so I plan to spend the majority of tomorrow finalizing the document. Please let me know if you have any last minute concerns or issues that I need to be aware of.

Thanks!

Miranda Hodgkiss  
Office of Water and Watersheds  
U.S. EPA Region 10  
(206) 553-0692  
[hodgkiss.miranda@epa.gov](mailto:hodgkiss.miranda@epa.gov)

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**From:** Hunter, Christopher  
**Sent:** Monday, June 11, 2018 12:59 PM  
**To:** Havard, James <Havard.James@epa.gov>  
**Cc:** Hodgkiss, Miranda <Hodgkiss.Miranda@epa.gov>  
**Subject:** FW: Deschutes draft decision document revision

Hi Jim,

I left Miranda a voicemail about the sharepoint link not working for us, but then tried a work-around of copying the link and pasting it in my browser manually, and I was able to access the word doc. Give that a try and see if it works any better for you

Chris

Chris Hunter  
202.566.1454  
Watershed Branch, Office of Water  
US Environmental Protection Agency

---

**From:** Hodgkiss, Miranda  
**Sent:** Friday, June 1, 2018 4:59 PM  
**To:** Hunter, Christopher <[Hunter.Christopher@epa.gov](mailto:Hunter.Christopher@epa.gov)>; Lewicki, Chris <[Lewicki.Chris@epa.gov](mailto:Lewicki.Chris@epa.gov)>; Curtin, James

[<curtin.james@epa.gov>](mailto:curtin.james@epa.gov)

**Cc:** Brown, Leah [<Brown.Leah@epa.gov>](mailto:Brown.Leah@epa.gov); Havard, James [<Havard.James@epa.gov>](mailto:Havard.James@epa.gov); Croxton, David [<Croxton.David@epa.gov>](mailto:Croxton.David@epa.gov); Mann, Laurie [<mann.laurie@epa.gov>](mailto:mann.laurie@epa.gov)

**Subject:** Deschutes draft decision document revision

Hello,

Thank you helping with the review of the draft Deschutes TMDL decision document. Your thoughts and comments were very helpful, and I appreciate all of your time and effort with this! I have worked through the comments and made edits to reflect your feedback. I'm sharing the document back out with you so you can check that I sufficiently addressed your concerns, and to make sure there are not any more outstanding high-level concerns with the document. After this point, we will start the management review and concurrence process for issuing our TMDL action.

To simplify this review, I only kept track changes where there were significant *content* changes (I tried not to keep reorganizational and editorial changes). I also greyed out and/or deleted comments that have been addressed or don't need further attention. I kept comments active where I think it would be a good idea for you to double check that I sufficiently addressed your concerns. I'm asking that you have this review done by next Friday 6/8. Here is the link to the document:

# Personal Privacy / Ex. 6

Feel free to call or email with questions!

Thanks,

Miranda Hodgkiss  
Office of Water and Watersheds  
U.S. EPA Region 10  
(206) 553-0692  
[hodgkiss.miranda@epa.gov](mailto:hodgkiss.miranda@epa.gov)

Message

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**From:** Hodgkiss, Miranda [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9D441DDB44AC4ED486058D2C2690B977-HODGKISS, MIRANDA]  
**Sent:** 6/15/2018 6:03:29 PM  
**To:** Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]  
**Subject:** RE: Deschutes

Ok, thanks!

Miranda Hodgkiss  
Office of Water and Watersheds  
U.S. EPA Region 10  
(206) 553-0692  
[hodgkiss.miranda@epa.gov](mailto:hodgkiss.miranda@epa.gov)

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**From:** Havard, James  
**Sent:** Friday, June 15, 2018 5:00 AM  
**To:** Hodgkiss, Miranda <[Hodgkiss.Miranda@epa.gov](mailto:Hodgkiss.Miranda@epa.gov)>; Brown, Leah <[Brown.Leah@epa.gov](mailto:Brown.Leah@epa.gov)>; Curtin, James <[curtin.james@epa.gov](mailto:curtin.james@epa.gov)>; Hunter, Christopher <[Hunter.Christopher@epa.gov](mailto:Hunter.Christopher@epa.gov)>; Lewicki, Chris <[Lewicki.Chris@epa.gov](mailto:Lewicki.Chris@epa.gov)>  
**Cc:** Croxton, David <[Croxton.David@epa.gov](mailto:Croxton.David@epa.gov)>; Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>  
**Subject:** RE: Deschutes

Materials and have been provided to Dave R but I don't know if they've been reviewed.

---

**From:** Hodgkiss, Miranda  
**Sent:** Thursday, June 14, 2018 6:05 PM  
**To:** Brown, Leah <[Brown.Leah@epa.gov](mailto:Brown.Leah@epa.gov)>; Curtin, James <[curtin.james@epa.gov](mailto:curtin.james@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>; Hunter, Christopher <[Hunter.Christopher@epa.gov](mailto:Hunter.Christopher@epa.gov)>; Lewicki, Chris <[Lewicki.Chris@epa.gov](mailto:Lewicki.Chris@epa.gov)>  
**Cc:** [sonya.shea@usdoj.gov](mailto:sonya.shea@usdoj.gov); Croxton, David <[Croxton.David@epa.gov](mailto:Croxton.David@epa.gov)>  
**Subject:** RE: Deschutes

Update after talking with Dave C this afternoon: Dan did meet with the RA, but it seems like the RA has not touched based with Dave Ross yet. I think he is wanting to talk with the state before he does so.

Jim H – Do you know if Ross has reviewed the briefing materials?

Miranda Hodgkiss  
Office of Water and Watersheds  
U.S. EPA Region 10  
(206) 553-0692  
[hodgkiss.miranda@epa.gov](mailto:hodgkiss.miranda@epa.gov)

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**From:** Hodgkiss, Miranda  
**Sent:** Thursday, June 14, 2018 9:19 AM  
**To:** Brown, Leah <[Brown.Leah@epa.gov](mailto:Brown.Leah@epa.gov)>; Curtin, James <[curtin.james@epa.gov](mailto:curtin.james@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>; Hunter, Christopher <[Hunter.Christopher@epa.gov](mailto:Hunter.Christopher@epa.gov)>; Lewicki, Chris <[Lewicki.Chris@epa.gov](mailto:Lewicki.Chris@epa.gov)>

**Cc:** [sonya.shea@usdoj.gov](mailto:sonya.shea@usdoj.gov); Croxton, David <[Croxton.David@epa.gov](mailto:Croxton.David@epa.gov)>

**Subject:** RE: Deschutes

Thanks for the update, Jim. No, I haven't heard back from Dan on his convo with the RA. We can check in with him today. I'm cc'ing Dave C. in case he has anything to add.

Miranda Hodgkiss  
Office of Water and Watersheds  
U.S. EPA Region 10  
(206) 553-0692  
[hodgkiss.miranda@epa.gov](mailto:hodgkiss.miranda@epa.gov)

---

**From:** Brown, Leah  
**Sent:** Thursday, June 14, 2018 9:04 AM  
**To:** Curtin, James <[curtin.james@epa.gov](mailto:curtin.james@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>; Hunter, Christopher <[Hunter.Christopher@epa.gov](mailto:Hunter.Christopher@epa.gov)>; Lewicki, Chris <[Lewicki.Chris@epa.gov](mailto:Lewicki.Chris@epa.gov)>; Hodgkiss, Miranda <[Hodgkiss.Miranda@epa.gov](mailto:Hodgkiss.Miranda@epa.gov)>  
**Cc:** [sonya.shea@usdoj.gov](mailto:sonya.shea@usdoj.gov)  
**Subject:** RE: Deschutes

Thanks, Jim. That's consistent with my understanding. I think Dan was planning to ask the RA whether he'd touched base with Dave Ross. Miranda, did you ever hear back from Dan on that?

Leah Brown  
Assistant Regional Counsel  
(206) 553-8694  
[brown.leah@epa.gov](mailto:brown.leah@epa.gov)

---

**From:** Curtin, James  
**Sent:** Thursday, June 14, 2018 8:42 AM  
**To:** Brown, Leah <[Brown.Leah@epa.gov](mailto:Brown.Leah@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>; Hunter, Christopher <[Hunter.Christopher@epa.gov](mailto:Hunter.Christopher@epa.gov)>; Lewicki, Chris <[Lewicki.Chris@epa.gov](mailto:Lewicki.Chris@epa.gov)>  
**Cc:** [sonya.shea@usdoj.gov](mailto:sonya.shea@usdoj.gov)  
**Subject:** Deschutes

This morning, I gave David Fotouhi a quick update.

**Ex. 5 Attorney Client (AC)**

# Ex. 5 Attorney Client (AC)

*Jim*

Jim Curtin  
USEPA Office of General Counsel  
Water Law Office  
202-564-5482  
William Jefferson Clinton North Rm. 7451

## Appointment

---

**From:** Gahner, Pamela [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1124DF96CE2C40BAB3557B5857BCC87D-GAHNER, PAM]  
**Sent:** 5/18/2018 4:53:06 PM  
**To:** Opalski, Dan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8b5ed6410d934bf699a008a252791a55-Opalski, Dan]; Brown, Leah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b8e396f718a74d0bb01f1e35b7319572-Rindner, Le]; Croxton, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ca7b9940863640d5b96f4295ea3c9641-Croxton, Dave]; Mann, Laurie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=91d9977275924e7b80a6751941c1c3b7-Mann, Laurie]; Hodgkiss, Miranda [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9d441ddb44ac4ed486058d2c2690b977-Hodgkiss, Miranda]; Zell, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a7206bbb71ff41c999629b86cc25c7e4-Zell, Chris]  
**CC:** Steiner-Riley, Cara [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bef7d04f2e64e4b8b90235a30cc7109-Steiner-Riley, Cara]; Stern, Allyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2e2d6f5df08d4e9abbff2c0880407775-Stern, Allyn]; Chung, Angela [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b3e49fcba1ad46f1bdbe92ebb4936350-Chung, Angela]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Curtin, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=728048227d024e0cb67932883007a4f9-JCURTIN]  
**Subject:** Deschutes TMDL Brief for the RA  
**Attachments:** R10 ORA Meeting or Event Request Form - Deschutes TMDL Briefing.docx; Deschutes TMDL Briefing with RA; Enclosure\_ORA 5-21 briefing.docx; 05.21.2018 Deschutes R10 ORA Briefing.docx; 05.18.2018 email Miranda Hodgkiss.pdf  
**Location:** ET Conference Room, Conf Line Ex. 6 Personal Privacy (PP) Code: Ex. 6 Personal Privacy (PP)  
**Start:** 5/21/2018 5:00:00 PM  
**End:** 5/21/2018 6:00:00 PM  
**Show Time As:** Tentative

POC: Miranda Hodgkiss

05/18/2018: revised attendees, revised Briefing Document via email from Miranda / P Gahner



Message

**From:** Wall, Tom [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=128011AC603C4D1A82301ADA1BDFD733-TWALL]  
**Sent:** 5/18/2018 4:14:17 AM  
**To:** Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]  
**CC:** Hunter, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32905162cc58495da107db89c7dea903-Hunter, Chr]; Lewicki, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7688d5b97aa94ba6af2f38984d479b56-CLewicki]; Monschein, Eric [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=110281a30e814820830c14fa5075ff90-EMonsche]  
**Subject:** Re: Deschutes Update

Thanks gathered something like that from John's note

### Ex. 6 Personal Privacy (PP)

Sent from my iPhone

On May 17, 2018, at 6:55 PM, Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)> wrote:

Confidential

Tom – FYI, John reported to me an updated decision about the RA briefing after talking to Dan: I will sit in for OW (Chris L can come to my office). Senior OW folks will not attend the RA briefing next week. Thanks! Jim

---

**From:** Goodin, John  
**Sent:** Thursday, May 17, 2018 6:42 PM  
**To:** Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Cc:** Campbell, Ann <[Campbell.Ann@epa.gov](mailto:Campbell.Ann@epa.gov)>; Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>; Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)>  
**Subject:** Deschutes Update

DELIBERATIVE

DRAFT

Dave et al.— the following is some updated info on the Deschutes TMDLs and a recommendation on how to engage you for input prior to Region 10 action on the TMDLs by our June 29 deadline.

The court denied our recent motion to stay the case until June 29. OGC is considering options while the Region continues to work on the TMDLs.

### Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

# Ex. 5 Deliberative Process (DP)

Let me know if we can do anything further.

Thanks,  
John

## Background

The Deschutes River, Percival Creek, and Budd Inlet Tributaries (Phase 1) TMDL study area is located in south Puget in Thurston and Lewis Counties, Washington. The Washington Department of Ecology submitted the final Phase 1 Deschutes TMDL to EPA for approval on December 17, 2015. That document addresses a total of 73 waterbody-pollutant combinations, involving temperature, dissolved oxygen [DO], pH, fecal coliform, and fine sediment impairments.

## Litigation

On September 6, 2017, Northwest Environmental Advocates (NWEA) filed a complaint against EPA alleging violation of section 303(d)(2) of the Clean Water Act (CWA) for failure to act on the Deschutes River TMDL submission. Section 303(d)(2) requires EPA to either approve or disapprove a state's TMDL submission within 30 days of submittal.

As part of the ongoing litigation, EPA has stated in briefs that we will act on the Deschutes TMDL by June 29, 2018. The judge has denied EPA's motion to stay the case until June 29, but has not yet ruled on the plaintiff's motion for summary judgment, and recommended a consent decree or stipulated entry of judgment to ensure EPA action on the TMDL. OGC is reviewing options while the Region continues work on the TMDL decision.

## Current Status

The CWA requires EPA to either approve or disapprove state-submitted TMDLs, and if we disapprove, we are required to develop a replacement TMDL within 30 days.

**Ex. 5 Deliberative Process (DP)**

# Ex. 5 Deliberative Process (DP)

Message

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**From:** Hunter, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=32905162CC58495DA107DB89C7DEA903-HUNTER, CHR]  
**Sent:** 5/17/2018 12:50:33 PM  
**To:** Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]  
**Subject:** RE: ACTION BY NOON THURSDAY: Update needed for Note/Paper for Dave Ross/OW-IO re: Deschutes WA TMDLs -- potential disapprovals

I'm fine with the edits Jim. I'll drop off a copy of the RA briefing paper this morning. Chris L and I looked it over and thought it was good. Any changes to the briefing paper would need to get back to the Region this morning.

Chris Hunter  
202.566.1454  
Watershed Branch, Office of Water  
US Environmental Protection Agency

---

**From:** Havard, James  
**Sent:** Wednesday, May 16, 2018 6:53 PM  
**To:** Hunter, Christopher <Hunter.Christopher@epa.gov>  
**Subject:** RE: ACTION BY NOON THURSDAY: Update needed for Note/Paper for Dave Ross/OW-IO re: Deschutes WA TMDLs -- potential disapprovals

Thanks Chris. OK with these edits? We'll need to hear back from R10 before including the part about DR being invited to the RA briefing before including this language.

---

**From:** Hunter, Christopher  
**Sent:** Wednesday, May 16, 2018 5:03 PM  
**To:** Havard, James <Havard.James@epa.gov>  
**Subject:** FW: ACTION BY NOON THURSDAY: Update needed for Note/Paper for Dave Ross/OW-IO re: Deschutes WA TMDLs -- potential disapprovals

Correct, updated version

Chris Hunter  
202.566.1454  
Watershed Branch, Office of Water  
US Environmental Protection Agency

---

**From:** Wall, Tom  
**Sent:** Tuesday, May 15, 2018 1:48 PM  
**To:** Havard, James <Havard.James@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>  
**Cc:** Goodin, John <Goodin.John@epa.gov>  
**Subject:** ACTION BY NOON THURSDAY: Update needed for Note/Paper for Dave Ross/OW-IO re: Deschutes WA TMDLs -- potential disapprovals

John would like us to lightly update the paper and note below to reflect the latest from the court. I'll be on leave Thursday so just cc: me as it goes back to John. Thank you,

Tom Wall, Director  
Watershed Restoration, Assessment and Protection Division  
Office of Wetlands, Oceans and Watersheds  
U.S. EPA  
[Wall.tom@epa.gov](mailto:Wall.tom@epa.gov)  
202/564-4179

---

**From:** Wall, Tom  
**Sent:** Thursday, May 03, 2018 2:31 PM  
**To:** Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>; Sandra Connors (<[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)> <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)>  
**Cc:** Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>; Monschein, Eric <[Monschein.Eric@epa.gov](mailto:Monschein.Eric@epa.gov)>; Hunter, Christopher <[Hunter.Christopher@epa.gov](mailto:Hunter.Christopher@epa.gov)>  
**Subject:** Note for Dave Ross/OW-IO re: Deschutes WA TMDLs -- potential disapprovals

John – here is a note and paper you could send to Dave about R10’s potential disapproval of a number of the Deschutes WA TMDLs:

---

Dave,

## Ex. 5 Deliberative Process (DP)

We can provide additional information if that would be helpful.

Message

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**From:** Hunter, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=32905162CC58495DA107DB89C7DEA903-HUNTER, CHR]  
**Sent:** 6/14/2018 1:23:02 PM  
**To:** Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]  
**Subject:** RE: Deschutes

Hi Jim,  
I'm back in the office today [REDACTED] I can act on Friday.

Chris Hunter  
202.566.1454  
Watershed Branch, Office of Water  
US Environmental Protection Agency

-----Original Message-----

From: Havard, James  
Sent: Wednesday, June 13, 2018 3:43 PM  
To: Hunter, Christopher <Hunter.Christopher@epa.gov>  
Subject: RE: Deschutes

Hi Chris [REDACTED] I am in the document adding my comments. Will finish today.

BTW, [REDACTED] do you plan to be in the office on Friday and , if so, can you act? Thanks!

-----Original Message-----

From: Hunter, Christopher  
Sent: Wednesday, June 13, 2018 2:59 PM  
To: Havard, James <Havard.James@epa.gov>  
Subject: Deschutes

Hi Jim,  
Were you able to get into Sharepoint and complete your review of the draft decision document? I got a voicemail from Miranda H asking when we are expecting to be done so she can make any final revisions, but I wasn't sure if she also reached out to you directly.

Thanks

Chris Hunter  
Watershed Branch, Office of Water  
US Environmental Protection Agency

Message

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**From:** Lewicki, Chris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7688D5B97AA94BA6AF2F38984D479B56-CLEWICKI]  
**Sent:** 4/16/2018 2:30:31 PM  
**To:** Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]  
**CC:** Monschein, Eric [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=110281a30e814820830c14fa5075ff90-EMonsche]  
**Subject:** Edits to Deschutes TPs  
  
**Importance:** High

Jim

Take a look at edits to Deschutes TPs and see if you are comfortable with them. I incorporated some of the info Croxton passed along on his latest email (7:30 Fri night), which I just saw.

---

**From:** Wall, Tom  
**Sent:** Thursday, April 12, 2018 5:42 PM  
**To:** Weiler, Katherine <Weiler.Katherine@epa.gov>  
**Cc:** Lewicki, Chris <Lewicki.Chris@epa.gov>; Havard, James <Havard.James@epa.gov>; Monschein, Eric <Monschein.Eric@epa.gov>; Yusuf, Istanbul <Yusuf.Istanbul@epa.gov>  
**Subject:** Draft weekly TPs

### Ohio 2016 303(d) List Litigation Status

- The district court has ordered EPA to approve or disapprove the Ohio's 2016 submission with respect to the open waters of Lake Erie within 30 days of its decision (Friday, May 11). If EPA were to disapprove, the Agency has another 30 days to identify waters to add to the State's 2016 List.
- The Court ruled in EPA's favor, specifically that: (1) EPA's Withdrawal of Approval Letter was not a disapproval and (2) the Plaintiffs had not satisfied procedural requirements to convert their APA claim into a CWA mandatory duty (to act on the list) claim.
- The Judge requested a status report by May 15 or sooner.
- We are meeting with David on Wednesday to discuss next steps.

### Deschutes TMDLs & Related Litigation Status

- NWEA has opposed EPA's motion to stay the Deschutes TMDLs litigation and has filed a companion motion for summary judgement seeking an order that EPA take action on the Washington State Deschutes TMDLs by June 29<sup>th</sup> (the same date EPA offered in our stay motion).
- It's likely that NWEA wants the court to issue an order to ensure that EPA acts by the June 29th date and that NWEA is entitled to attorney's fees.
- EPA's reply to the NWEA's opposition to the stay motion is due April 20<sup>th</sup>, and EPA's summary judgement response is due April 23rd.
- OGC, R10 and OWOW are discussing options to end the litigation, including cross-moving for summary judgment, since the parties appear to agree on a date for EPA action.
- R10 is drafting a TMDL approval/disapproval decision document that OWOW and OGC will review, likely before the end of on April 30th.
- R10 staff are scheduling a ~~A briefing is being scheduled~~ briefing for the R10 RA to discuss options for approval/disapproval of the TMDLs for the last week of May.

- R10 staff will be recommending some disapprovals to the RA.
- The Region knows that Dave would like to talk to the RA if the Region intends to disapprove some of the TMDLs

#### Florida 303(d) list approval/deferral

## Ex. 5 Deliberative Process (DP)

#### Appeals Court Decision in Buffalo Ditch TMDL Litigation to District Court

- Last week Monday, April 9, the Eighth Circuit Court of Appeals reversed the district court and held that the City of Kennett, Missouri had standing to challenge EPA's 2010 approval of Missouri's total phosphorus TMDL for Buffalo Ditch. The district court had determined (2017) that the City would have standing to challenge the TMDL approval only when the TMDL was implemented in its state-issued NPDES permit.
- The Eighth Circuit held that the City had:
  - established injury-in-fact because, under EPA's regulations, any new permit must contain limits on the City's discharge consistent with the TMDL's wasteload allocations, and
  - waived its claim that EPA's TMDL approval was not supported by adequate notice and comment.
- The appeals court remanded the case to the district court to consider whether the City had waived its technical challenges to the TMDL by not raising them during the state's administrative process.
- DOJ has asked for EPA's recommendation on filing a petition for certiorari by May 9<sup>th</sup>.

Message

**From:** Lewicki, Chris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7688D5B97AA94BA6AF2F38984D479B56-CLEWICKI]  
**Sent:** 4/13/2018 3:12:19 PM  
**To:** Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]  
**CC:** Monschein, Eric [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=110281a30e814820830c14fa5075ff90-EMonsche]  
**Subject:** For Havard: Deschutes process

Jim:

Just want to make sure you and others had this email in mind when deciding course of action on Deschutes. Note the yellow highlight in which Sandra tells DR that OWOW is are working with Region 10 to schedule time to talk to RA about Deschutes.

---

**From:** Connors, Sandra  
**Sent:** Wednesday, April 11, 2018 9:57 AM  
**To:** Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>  
**Cc:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>; Best-Wong, Benita <[Best-Wong.Benita@epa.gov](mailto:Best-Wong.Benita@epa.gov)>; Campbell, Ann <[Campbell.Ann@epa.gov](mailto:Campbell.Ann@epa.gov)>; Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>; Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>  
**Subject:** RE: Request for Input on Litigation Stays for Two TMDL-Related Matters

Dave – Good morning. We understand that based on the input from OGC-Ethics, you have determined that there is no need for recusal under the specific circumstances of the James River litigation. Here is the question originally raised:

Chesapeake Bay TMDL:

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

On the Deschutes TMDLs also referenced below, we are quickly approaching the deadlines for EPA action. The R10 RA has been briefed and we are working with the Region to schedule time for you and Chris to engage on his proposed course of action. We will provide you with materials and happy to provide a briefing if desired.

Thanks,  
*Sandra*



Sandra L. Connors  
Deputy Director  
Office of Wetlands, Oceans, and Watersheds  
US Environmental Protection Agency, MC 4501T  
1200 Pennsylvania Avenue, WJCW 7130A  
Washington, DC 20460  
(202)564-4231  
[connors.sandra@epa.gov](mailto:connors.sandra@epa.gov)

---

**From:** Ross, David P  
**Sent:** Thursday, March 22, 2018 4:17 PM  
**To:** Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)>  
**Cc:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>; Best-Wong, Benita <[Best-Wong.Benita@epa.gov](mailto:Best-Wong.Benita@epa.gov)>; Campbell, Ann <[Campbell.Ann@epa.gov](mailto:Campbell.Ann@epa.gov)>; Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>  
**Subject:** Re: Request for Input on Litigation Stays for Two TMDL-Related Matters

Hi Sandra,

First question. Is the James River case

**Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

Regarding the Deschutes River matter,

**Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

I will weigh in on the James River matter after you answer my question above. Thanks.

Dave

Sent from my iPad

On Mar 21, 2018, at 7:14 PM, Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)> wrote:

DELIBERATIVE

Dave - We recommend your support for the proposed paths identified below in litigation related to the Chesapeake Bay (CB) TMDLs and the Deschutes River TMDLs. We would be happy to provide additional background or briefings as desired.

CB TMDL

**Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

# Ex. 5 Deliberative Process (DP)

Deschutes River:

Ex. 5 Attorney Client (AC)

# Ex. 5 Attorney Client (AC)

If you are comfortable with these approaches, we will convey that to OGC.

Thanks,

*Sandra*

---

Sandra L. Connors  
Deputy Director

Office of Wetlands, Oceans, and Watersheds  
US Environmental Protection Agency, MC 4501T  
1200 Pennsylvania Avenue, WJCW 7130A  
Washington, DC 20460  
(202)564-4231

[connors.sandra@epa.gov](mailto:connors.sandra@epa.gov)

**From:** [Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)

**Date:** March 9, 2018 at 11:55:24 AM CST

**To:** [ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)

**Cc:** Lee Forsgren <[forsgren.lee@epa.gov](mailto:forsgren.lee@epa.gov)>, Tom Wall <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>, [Havard.James@epa.gov](mailto:Havard.James@epa.gov)

**Subject:** FYI: Deschutes TMDL Joint Status Report Filing Today

DELIBERATE

Dave— As mentioned at staff meeting Monday, today DOJ and plaintiff are filing a joint status report in Northwest Environmental Advocates v EPA, USDC, W.D. of Washington. This case alleges EPA failed to carry out its nondiscretionary duty to approve or disapprove the Deschutes River TMDLs within thirty days after submission by the State. The TMDL submission by the State involves 73 water segments and 5 pollutants, and was submitted in 2015 and supplemented in 2017.

Ex. 5 Deliberative Process (DP)

## **Ex. 5 Deliberative Process (DP)**

Happy to discuss the TMDL timing issue as we move forward.

Thanks  
John

Sent from my iPhone

Message

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**From:** Wall, Tom [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=128011AC603C4D1A82301ADA1BDFD733-TWALL]  
**Sent:** 4/11/2018 9:18:01 PM  
**To:** Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]  
**Subject:** RE: feedback from Dave Ross re: Deschutes TMDLs

What do you think?

---

Thanks Dan, We wouldn't put together a paper about these disapprovals without coordinating with you all. Understand your folks are working up a briefing package for you and the RA. When it's ready, maybe we can share the paper with Dave Ross. We'll be sure to let him know we've been working with you. Dave can call Chris if he has any issues he wants to discuss?

## Ex. 5 Deliberative Process (DP)

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**From:** Opalski, Dan  
**Sent:** Wednesday, April 11, 2018 12:11 PM  
**To:** Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>  
**Cc:** Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>; Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>; Chung, Angela <[Chung.Angela@epa.gov](mailto:Chung.Angela@epa.gov)>; Croxton, David <[Croxton.David@epa.gov](mailto:Croxton.David@epa.gov)>  
**Subject:** Re: feedback from Dave Ross re: Deschutes TMDLs

Tom — Thanks for the call and this follow-up. As in most of these matters, I think it also is important that Dave is hearing from HQ folks given the considerable amount of time some of the staff have invested with us already. (The note to Dave refers to our intended action, but does not provide any indication of review or involvement by HQ staff.) If we need to talk more before Chris and Dave communicate, especially about potentially differences regarding the quality/approvability of the TMDLs, please let me know. We will proceed in the meantime to get Chris more info on the details — he already is aware of the status in general. Thanks again.

Sent from my iPhone

On Apr 10, 2018, at 2:50 PM, Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)> wrote:

Hi Dan – following up on our conversation, see highlighted text. We'll be happy to work with you to help tee this up on the timeline that's needed. Thank you,

Tom Wall, Director  
Watershed Restoration, Assessment and Protection Division  
Office of Wetlands, Oceans and Watersheds  
U.S. EPA  
[Wall.tom@epa.gov](mailto:Wall.tom@epa.gov)  
202/564-4179

**From:** Ross, David P  
**Sent:** Thursday, March 22, 2018 4:17 PM  
**To:** Connors, Sandra <Connors.Sandra@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Wall, Tom <Wall.Tom@epa.gov>  
**Subject:** Re: Request for Input on Litigation Stays for Two TMDL-Related Matters

Hi Sandra,

First question. Is the James River case

**Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

Regarding the Deschutes River matter,

**Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

I will weigh in on the James River matter after you answer my question above. Thanks.

Dave

Sent from my iPad

On Mar 21, 2018, at 7:14 PM, Connors, Sandra <Connors.Sandra@epa.gov> wrote:

DELIBERATIVE

Dave - We recommend your support for the proposed paths identified below in litigation related to the Chesapeake Bay (CB) TMDLs and the Deschutes River TMDLs. We would be happy to provide additional background or briefings as desired.

CB TMDL:

**Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

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## Ex. 5 Deliberative Process (DP)

Deschutes River: John previously shared with you the note below, and DOJ is now proposing to seek a joint motion with Northwest Environmental Advocates (NWEA) for a stay until July 13th to allow R10 to act on the 70 plus TMDLs submitted by the State. OGC is supportive and we plan to coordinate closely with R10 as the Region contemplates recommending many disapprovals.

If you are comfortable with these approaches, we will convey that to OGC.

Thanks,

*Sandra*

---

Sandra L. Connors  
Deputy Director

Office of Wetlands, Oceans, and Watersheds  
US Environmental Protection Agency, MC 4501T  
1200 Pennsylvania Avenue, WJCW 7130A  
Washington, DC 20460  
(202)564-4231

[connors.sandra@epa.gov](mailto:connors.sandra@epa.gov)

**From:** [Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)

**Date:** March 9, 2018 at 11:55:24 AM CST

**To:** [ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)

**Cc:** Lee Forsgren <[forsgren.lee@epa.gov](mailto:forsgren.lee@epa.gov)>, Tom Wall <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>, [Havard.James@epa.gov](mailto:Havard.James@epa.gov)

**Subject:** FYI: Deschutes TMDL Joint Status Report Filing Today

DELIBERATE

Dave— As mentioned at staff meeting Monday, today DOJ and plaintiff are filing a joint status report in Northwest Environmental Advocates v EPA, USDC, W.D. of Washington. This case alleges EPA failed to carry out its nondiscretionary duty to approve or disapprove the Deschutes River TMDLs within thirty days after submission by the State. The TMDL submission by the State involves 73 water segments and 5 pollutants, and was submitted in 2015 and supplemented in 2017.

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

Happy to discuss the TMDL timing issue as we move forward.

Thanks  
John

Sent from my iPhone

Message

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**From:** Goodin, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3EAC342F280A4B9DB4079C81F66D1913-JGOODIN]  
**Sent:** 6/12/2018 5:00:30 PM  
**To:** Wall, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=128011ac603c4d1a82301ada1bdfd733-Twall]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Hunter, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32905162cc58495da107db89c7dea903-Hunter, Chr]  
**Subject:** FW: Latest Deschutes Info

FYI

---

**From:** Goodin, John  
**Sent:** Tuesday, June 12, 2018 12:59 PM  
**To:** Opalski, Dan <Opalski.Dan@epa.gov>  
**Subject:** RE: Latest Deschutes Info

Thanks, Dan—I forwarded a copy of your briefing materials to Dave and Lee with a short download on your May briefing for Chris. At this point I have not heard whether either have spoken with Chris. I will send the updated summary sheet along today and remind them of the end of month target.

Thanks again,  
John

---

**From:** Opalski, Dan  
**Sent:** Monday, June 11, 2018 1:47 PM  
**To:** Goodin, John <Goodin.John@epa.gov>  
**Subject:** FW: Latest Deschutes Info

John – FYI. If any thoughts or insights, please let me know if it would be good to talk. Thx.

---

**From:** Opalski, Dan  
**Sent:** Friday, June 8, 2018 11:14 AM  
**To:** Hladick, Christopher <hladick.christopher@epa.gov>  
**Cc:** Gahner, Pamela <gahner.pamela@epa.gov>  
**Subject:** Latest Deschutes Info

Chris –

Not knowing exactly when/how you may have an opportunity with Lee and Dave, here is an updated version of the briefing paper we did for you, including an updated version of the table that summarizes the action by segment/pollutant. As I mentioned, I believe Dave received copies of the original package we provided to you for your 5/21 briefing.

The further summary of the table by category is as follows:

## Ex. 5 Deliberative Process (DP)



# Ex. 5 Deliberative Process (DP)

There is a relatively minor chance of some tweaks to the numbers by category as we work through the final round of staff and mid-manager level review in HQ, but I think the current info conveys the approach clearly enough.

Please let me know if you want us to put together anything more/different.

Dan Opalski  
Director  
Office of Water and Watersheds  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101  
206-553-1855  
FAX: 206-553-1280

Message

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**From:** Wall, Tom [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=128011AC603C4D1A82301ADA1BDFD733-TWALL]  
**Sent:** 4/11/2018 7:04:25 PM  
**To:** Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]  
**Subject:** RE: feedback from Dave Ross re: Deschutes TMDLs

What do you think?

---

Thanks Dave, we wouldn't put together a paper about these disapprovals without coordinating with you all and that sounds like extra work. Maybe we can share with Dave the paper with details you all are working on for Chris. We'll be sure to let him know we've been working with you all. Dave can call Chris if he has any issues he wants to discuss?

## Ex. 5 Deliberative Process (DP)

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**Cc:** Goodin, John <Goodin.John@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Havard, James <Havard.James@epa.gov>; Chung, Angela <Chung.Angela@epa.gov>; Croxton, David <Croxton.David@epa.gov>  
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Ex. 5 Deliberative Process (DP)

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## Ex. 5 Deliberative Process (DP)

Deschutes River:

Ex. 5 Attorney Client (AC)

## Ex. 5 Attorney Client (AC)

If you are comfortable with these approaches, we will convey that to OGC.

Thanks,

*Sandra*

---

Sandra L. Connors  
Deputy Director

Office of Wetlands, Oceans, and Watersheds  
US Environmental Protection Agency, MC 4501T  
1200 Pennsylvania Avenue, WJCW 7130A  
Washington, DC 20460  
(202)564-4231

[connors.sandra@epa.gov](mailto:connors.sandra@epa.gov)

**From:** [Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)

**Date:** March 9, 2018 at 11:55:24 AM CST

**To:** [ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)

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[Havard.James@epa.gov](mailto:Havard.James@epa.gov)

**Subject:** FYI: Deschutes TMDL Joint Status Report Filing Today

DELIBERATE

Dave— As mentioned at staff meeting Monday, today DOJ and plaintiff are filing a joint status report in Northwest Environmental Advocates v EPA, USDC, W.D. of Washington. This case alleges EPA failed to carry out its nondiscretionary duty to approve or disapprove the Deschutes River TMDLs within thirty days after submission by the State. The TMDL submission by the State involves 73 water segments and 5 pollutants, and was submitted in 2015 and supplemented in 2017.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

## **Ex. 5 Deliberative Process (DP)**

Happy to discuss the TMDL timing issue as we move forward.

Thanks  
John

Sent from my iPhone

Message

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**From:** Croxton, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CA7B9940863640D5B96F4295EA3C9641-CROXTON, DAVE]  
**Sent:** 6/8/2018 7:43:49 PM  
**To:** Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]  
**Subject:** RE: Deschutes -- Quick update on briefing with RA

Hi Jim,

As of yesterday, RA had not connected with Ross. Opalski and Ross are conversing on this topic and trying to have some additional coordination with the state prior to that call. I'll update you as I learn more.

Dave

---

**From:** Havard, James  
**Sent:** Monday, June 4, 2018 6:21 AM  
**To:** Croxton, David <Croxton.David@epa.gov>  
**Cc:** Hodgkiss, Miranda <Hodgkiss.Miranda@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; Lewicki, Chris <Lewicki.Chris@epa.gov>  
**Subject:** FW: Deschutes -- Quick update on briefing with RA

Hi Dave –

Welcome back! Please see below. Do you know if the RA has connected with Dave Ross yet?

Thanks!

Jim

---

**From:** Goodin, John  
**Sent:** Tuesday, May 22, 2018 2:19 PM  
**To:** Ross, David P <ross.davidp@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Campbell, Ann <Campbell.Ann@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Wall, Tom <Wall.Tom@epa.gov>; Havard, James <Havard.James@epa.gov>  
**Subject:** Deschutes -- Quick update on briefing with RA

Afternoon, Dave—as referenced last week, what follows is a quick download on the Deschutes briefing for the R10 RA yesterday via Branch Chief Jim Havard, who was invited to listen.

**Ex. 5 Deliberative Process (DP)** A few additional points:

- The RA plans to call you (likely sometime later this week) to discuss the matter
- The RA asked the Regional program to provide a status update to the State of WA (Dept of Ecology and also potentially the Governor's office) before acting
- The Region, OWOW, and OGC are preparing materials in anticipation of acting by the June 29<sup>th</sup> deadline.

I've attached the briefing document used to brief the RA, including a separate attachment in chart form that describes the status of each TMDL, as well as our background summary email below.

Happy to follow-up before or after your call with Chris.

Thanks,

John

-----  
**From:** Goodin, John  
**Sent:** Thursday, May 17, 2018 6:42 PM  
**To:** Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Cc:** Campbell, Ann <[Campbell.Ann@epa.gov](mailto:Campbell.Ann@epa.gov)>; Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>; Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)>  
**Subject:** Deschutes Update

DELIBERATIVE                      DRAFT

Dave et al. — the following is some updated info on the Deschutes TMDLs and a recommendation on how to engage you for input prior to Region 10 action on the TMDLs by our June 29 deadline.

The court denied our recent motion to stay the case until June 29. OGC is considering options while the Region continues to work on the TMDLs. You previously indicated that you supported our general direction in the case, however, you were interested in the RA's position on potential TMDL disapprovals well before the actual decision is made. Chris H. will be briefed Monday and we'll get this feedback to you immediately thereafter. I also spoke to the R10 Water Division Director and indicated that you'd likely also be interested in the rationale of what TMDLs were candidates for approval, for approval with minor rework, and for disapproval. We'll work with the Region to provide this information in an efficient format. With the RA's views and background info in hand next week, we would be available to brief you or provide the info to you for your review. Recommend that you could then have a call with Chris before the end of May.

## Ex. 5 Deliberative Process (DP)

Let me know if we can do anything further.

Thanks,  
John

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### Background

The Deschutes River, Percival Creek, and Budd Inlet Tributaries (Phase 1) TMDL study area is located in south Puget in Thurston and Lewis Counties, Washington. The Washington Department of Ecology submitted the final Phase 1 Deschutes TMDL to EPA for approval on December 17, 2015. That document addresses a total of 73 waterbody-pollutant combinations, involving temperature, dissolved oxygen [DO], pH, fecal coliform, and fine sediment impairments.

### Litigation

On September 6, 2017, Northwest Environmental Advocates (NWEA) filed a complaint against EPA alleging violation of section 303(d)(2) of the Clean Water Act (CWA) for failure to act on the Deschutes River TMDL submission. Section 303(d)(2) requires EPA to either approve or disapprove a state's TMDL submission within 30 days of submittal.

As part of the ongoing litigation, EPA has stated in briefs that we will act on the Deschutes TMDL by June 29, 2018. The judge has denied EPA's motion to stay the case until June 29, but has not yet ruled on the plaintiff's motion for summary judgment, and recommended a consent decree or stipulated entry of judgment to ensure EPA action on the TMDL. OGC is reviewing options while the Region continues work on the TMDL decision.

### Current Status

The CWA requires EPA to either approve or disapprove state-submitted TMDLs, and if we disapprove, we are required to develop a replacement TMDL within 30 days.

**Ex. 5 Deliberative Process (DP)**

# **Ex. 5 Deliberative Process (DP)**



Message

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**From:** Hunter, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=32905162CC58495DA107DB89C7DEA903-HUNTER, CHR]  
**Sent:** 6/7/2018 5:38:53 PM  
**To:** Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]  
**CC:** Lewicki, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7688d5b97aa94ba6af2f38984d479b56-CLewicki]; Curtin, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=728048227d024e0cb67932883007a4f9-JCURTIN]  
**Subject:** Re: Deschutes draft decision document revision

Hi Jim,

I reviewed a hard copy of the revised decision doc on the plane, so I won't be able to upload comments until next week, and Jim C told me yesterday that he was not going to be able to review until next week as well. I'm going to meet with Miranda this afternoon to discuss next steps so I'll let her know that we will need a couple of extra days. I think the new draft is much improved and I don't have a lot of substantive comments, just a couple of clarifying questions to check on. I'll also check with Miranda and Dan if they know if the RA has talked with HQ yet about this action.

Chris

Chris Hunter  
Watershed Branch, Office of Water  
US Environmental Protection Agency

On Jun 7, 2018, at 10:16 AM, Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)> wrote:

Hi Chris H – I hope your trip is going well. I saw that you told Chris L that you got a chance to review this on the plane. When will you be able to upload your comments? I'd like the benefit of them before I review if possible.

Jim C: Will you have further comments?

Depending on when comments will be available, I may ask if we can have until Monday to complete our comments on this.

Jim

---

**From:** Hodgkiss, Miranda  
**Sent:** Friday, June 01, 2018 4:59 PM  
**To:** Hunter, Christopher <[Hunter.Christopher@epa.gov](mailto:Hunter.Christopher@epa.gov)>; Lewicki, Chris <[Lewicki.Chris@epa.gov](mailto:Lewicki.Chris@epa.gov)>; Curtin, James <[curtin.james@epa.gov](mailto:curtin.james@epa.gov)>  
**Cc:** Brown, Leah <[Brown.Leah@epa.gov](mailto:Brown.Leah@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>; Croxton, David <[Croxton.David@epa.gov](mailto:Croxton.David@epa.gov)>; Mann, Laurie <[mann.laurie@epa.gov](mailto:mann.laurie@epa.gov)>  
**Subject:** Deschutes draft decision document revision

Hello,

Thank you helping with the review of the draft Deschutes TMDL decision document. Your thoughts and comments were very helpful, and I appreciate all of your time and effort with this! I have worked

through the comments and made edits to reflect your feedback. I'm sharing the document back out with you so you can check that I sufficiently addressed your concerns, and to make sure there are not any more outstanding high-level concerns with the document. After this point, we will start the management review and concurrence process for issuing our TMDL action.

To simplify this review, I only kept track changes where there were significant *content* changes (I tried not to keep reorganizational and editorial changes). I also greyed out and/or deleted comments that have been addressed or don't need further attention. I kept comments active where I think it would be a good idea for you to double check that I sufficiently addressed your concerns. I'm asking that you have this review done by next Friday 6/8. Here is the link to the document:

# Personal Privacy / Ex. 6

Feel free to call or email with questions!

Thanks,

Miranda Hodgkiss  
Office of Water and Watersheds  
U.S. EPA Region 10  
(206) 553-0692  
[hodgkiss.miranda@epa.gov](mailto:hodgkiss.miranda@epa.gov)

Message

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**Sent:** 6/4/2018 10:32:54 PM  
**To:** Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]  
**Subject:** RE: Deschutes -- Quick update on briefing with RA

Hi Jim, Thanks. I'm checking on this. Got strong positive feedback from folks here on W. Va. Thanks and Congrats! Sorry to have missed it.

---

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John

### Background

The Deschutes River, Percival Creek, and Budd Inlet Tributaries (Phase 1) TMDL study area is located in south Puget in Thurston and Lewis Counties, Washington. The Washington Department of Ecology submitted the final Phase 1 Deschutes TMDL to EPA for approval on December 17, 2015. That document addresses a total of 73 waterbody-pollutant combinations, involving temperature, dissolved oxygen [DO], pH, fecal coliform, and fine sediment impairments.

### Litigation

On September 6, 2017, Northwest Environmental Advocates (NWEA) filed a complaint against EPA alleging violation of section 303(d)(2) of the Clean Water Act (CWA) for failure to act on the Deschutes River TMDL submission. Section 303(d)(2) requires EPA to either approve or disapprove a state's TMDL submission within 30 days of submittal.

As part of the ongoing litigation, EPA has stated in briefs that we will act on the Deschutes TMDL by June 29, 2018. The judge has denied EPA's motion to stay the case until June 29, but has not yet ruled on the plaintiff's motion for summary judgment, and recommended a consent decree or stipulated entry of judgment to ensure EPA action on the TMDL. OGC is reviewing options while the Region continues work on the TMDL decision.

### Current Status

The CWA requires EPA to either approve or disapprove state-submitted TMDLs, and if we disapprove, we are required to develop a replacement TMDL within 30 days.

**Ex. 5 Deliberative Process (DP)**

Ex. 5 Deliberative Process (DP)

# Ex. 5 Deliberative Process (DP)

Message

**From:** Wall, Tom [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=128011AC603C4D1A82301ADA1BDFD733-TWALL]  
**Sent:** 3/26/2018 7:18:26 PM  
**To:** Curtin, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=728048227d024e0cb67932883007a4f9-JCURTIN]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]  
**CC:** Monschein, Eric [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=110281a30e814820830c14fa5075ff90-EMonsche]; Hunter, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32905162cc58495da107db89c7dea903-Hunter, Chr]; Lewicki, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7688d5b97aa94ba6af2f38984d479b56-CLewicki]  
**Subject:** Status: any further word on Deschutes timeline? Thank you,

---

**From:** Curtin, James  
**Sent:** Thursday, March 22, 2018 4:59 PM  
**To:** Havard, James <Havard.James@epa.gov>  
**Cc:** Wall, Tom <Wall.Tom@epa.gov>; Monschein, Eric <Monschein.Eric@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; Lewicki, Chris <Lewicki.Chris@epa.gov>  
**Subject:** RE: Request for Input on Litigation Stays for Two TMDL-Related Matters

## Ex. 5 Attorney Client (AC)

I'll respond separately re James River.

**Jim**

Jim Curtin  
USEPA Office of General Counsel  
Water Law Office  
202-564-5482  
William Jefferson Clinton North Rm. 7451

---

**From:** Havard, James  
**Sent:** Thursday, March 22, 2018 4:53 PM  
**To:** Curtin, James <[curtin.james@epa.gov](mailto:curtin.james@epa.gov)>  
**Cc:** Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>; Monschein, Eric <[Monschein.Eric@epa.gov](mailto:Monschein.Eric@epa.gov)>; Hunter, Christopher <[Hunter.Christopher@epa.gov](mailto:Hunter.Christopher@epa.gov)>; Lewicki, Chris <[Lewicki.Chris@epa.gov](mailto:Lewicki.Chris@epa.gov)>  
**Subject:** FW: Request for Input on Litigation Stays for Two TMDL-Related Matters  
**Importance:** High

Jim C:

Good news on Deschutes – Dave OK with Ex. 5 Attorney Client (AC)

Please see highlight below on James River. We are looking to you for help in responding.

Thanks! Jim

---

**From:** Wall, Tom  
**Sent:** Thursday, March 22, 2018 4:49 PM  
**To:** Havard, James <Havard.James@epa.gov>  
**Subject:** FW: Request for Input on Litigation Stays for Two TMDL-Related Matters

**From:** Connors, Sandra  
**Sent:** Thursday, March 22, 2018 4:32 PM  
**To:** Wall, Tom <Wall.Tom@epa.gov>  
**Cc:** Goodin, John <Goodin.John@epa.gov>  
**Subject:** FW: Request for Input on Litigation Stays for Two TMDL-Related Matters

Tom - Can you get the answer to the first and I can handle the second.

---

**From:** Ross, David P  
**Sent:** Thursday, March 22, 2018 4:17 PM  
**To:** Connors, Sandra <Connors.Sandra@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Wall, Tom <Wall.Tom@epa.gov>  
**Subject:** Re: Request for Input on Litigation Stays for Two TMDL-Related Matters

Hi Sandra,

First question. Is the James River case

Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

Regarding the Deschutes River matter,

Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

I will weigh in on the James River matter after you answer my question above. Thanks.

Dave

Sent from my iPad

On Mar 21, 2018, at 7:14 PM, Connors, Sandra <Connors.Sandra@epa.gov> wrote:

DELIBERATIVE

Dave - We recommend your support for the proposed paths identified below in litigation related to the Chesapeake Bay (CB) TMDLs and the Deschutes River TMDLs. We would be happy to provide additional background or briefings as desired.

CB TMDL:

Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

# Ex. 5 Deliberative Process (DP)

Deschutes River:

Ex. 5 Attorney Client (AC)

# Ex. 5 Attorney Client (AC)

If you are comfortable with these approaches, we will convey that to OGC.

Thanks,

*Sandra*

---

Sandra L. Connors  
Deputy Director

Office of Wetlands, Oceans, and Watersheds  
US Environmental Protection Agency, MC 4501T  
1200 Pennsylvania Avenue, WJCW 7130A  
Washington, DC 20460  
(202)564-4231

[connors.sandra@epa.gov](mailto:connors.sandra@epa.gov)

**From:** [Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)

**Date:** March 9, 2018 at 11:55:24 AM CST

**To:** [ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)

**Cc:** Lee Forsgren <[forsgren.lee@epa.gov](mailto:forsgren.lee@epa.gov)>, Tom Wall <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>, [Havard.James@epa.gov](mailto:Havard.James@epa.gov)

**Subject:** FYI: Deschutes TMDL Joint Status Report Filing Today

DELIBERATE

Dave— As mentioned at staff meeting Monday, today DOJ and plaintiff are filing a joint status report in Northwest Environmental



Advocates v EPA, USDC, W.D. of Washington. This case alleges EPA failed to carry out its nondiscretionary duty to approve or disapprove the Deschutes River TMDLs within thirty days after submission by the State. The TMDL submission by the State involves 73 water segments and 5 pollutants, and was submitted in 2015 and supplemented in 2017.

Ex. 5 Deliberative Process (DP)

## **Ex. 5 Deliberative Process (DP)**

Happy to discuss the TMDL timing issue as we move forward.

Thanks  
John

Sent from my iPhone

Message

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**From:** Havard, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9350676809E8403994F1DFC2B7BFDCFE-JHAVARD]  
**Sent:** 3/5/2018 12:49:17 PM  
**To:** Wall, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=128011ac603c4d1a82301ada1bdfd733-Twall]  
**Subject:** RE: Think we need to send Dave a write up on Deschutes and offer him a briefing or suggest he call RA

Won't necessarily need one. . . . . Thinking if we do need some level of decision this week, we'd have provided a heads up today, and can hopefully handle through email or short conversation..

---

**From:** Wall, Tom  
**Sent:** Sunday, March 04, 2018 12:24 PM  
**To:** Havard, James <Havard.James@epa.gov>  
**Subject:** RE: Think we need to send Dave a write up on Deschutes and offer him a briefing or suggest he call RA

Looks good, thanks Jim, glad we don't need to seek a decision before Friday.

Tom Wall, Director  
Watershed Restoration, Assessment and Protection Division  
Office of Wetlands, Oceans and Watersheds  
U.S. EPA  
[Wall.tom@epa.gov](mailto:Wall.tom@epa.gov)  
202/564-4179

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**From:** Havard, James  
**Sent:** Saturday, March 03, 2018 10:38 AM  
**To:** Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>  
**Subject:** FW: Think we need to send Dave a write up on Deschutes and offer him a briefing or suggest he call RA

I meant: Don't think we necessarily have to make this decision

---

**From:** Havard, James  
**Sent:** Saturday, March 03, 2018 10:37 AM  
**To:** Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>  
**Subject:** RE: Think we need to send Dave a write up on Deschutes and offer him a briefing or suggest he call RA

## Ex. 5 Deliberative Process (DP)

Here's the draft (pls let me know any feedback and I'll include it in the broader set of TPs I send forward):

### Deschutes River TMDLs and Litigation

- Northwest Environmental Advocates (NWEA) filed its single-count complaint, on Monday Nov 6th, in the W.D. of Washington (Seattle) court alleging EPA failed to carry out its nondiscretionary duty to approve or disapprove the Deschutes River TMDLs within thirty days after submission by the state.

- R10 received the original TMDL submission package in December 2015 and has not yet taken action. The state made a supplemental submission in July 2017 that arguably include new load calculations for some of the TMDLs. R10 has not acted on that either.
- NWEA has indicated it would like to postpone briefings for six months to provide time for discovery and review. EPA and NWEA will file a joint status report on March 9, 2018.

## Ex. 5 Deliberative Process (DP)

- Due to the large number of waters (73 water quality impaired segments by five pollutants) and complexity of the issues, resolving this matter will require significant Regional resources, and the Region has developed several options for short and longer term actions to address the outstanding TMDLs.
- We will be meeting shortly with OWOW, R10, and OGC to develop materials and recommendations for senior leaders for the joint status report and for the broader questions about completing TMDLs review.

### Background

- The TMDLs consist of 73 water quality impaired segments by five pollutants (temperature, pH, fecal coliform, dissolved oxygen, and fine sediment).

## Ex. 5 Deliberative Process (DP)

**From:** Wall, Tom

**Sent:** Saturday, March 03, 2018 10:04 AM

**To:** Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>

**Subject:** Re: Think we need to send Dave a write up on Deschutes and offer him a briefing or suggest he call RA

## Ex. 5 Deliberative Process (DP)

On Mar 3, 2018, at 9:22 AM, Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)> wrote:

Hi Tom- You and I discussed that we'll start with a talking point, which is forthcoming.

**From:** Wall, Tom

**Sent:** Friday, March 02, 2018 6:13 PM

**To:** Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>; Monschein, Eric <[Monschein.Eric@epa.gov](mailto:Monschein.Eric@epa.gov)>

**Subject:** Think we need to send Dave a write up on Deschutes and offer him a briefing or suggest he call RA

Message

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**From:** Havard, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9350676809E8403994F1DFC2B7BFDCFE-JHAVARD]  
**Sent:** 5/1/2018 7:10:30 PM  
**To:** Lewicki, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7688d5b97aa94ba6af2f38984d479b56-CLewicki]; Monschein, Eric [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=110281a30e814820830c14fa5075ff90-EMonsche]; Hunter, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32905162cc58495da107db89c7dea903-Hunter, Chr]  
**Subject:** FW: Deschutes paper  
**Attachments:** Deschutes TMDL background 5-01+tw.docx

I told Tom I thought this cover note looked fine

---

**From:** Wall, Tom  
**Sent:** Tuesday, May 01, 2018 2:27 PM  
**To:** Havard, James <Havard.James@epa.gov>  
**Cc:** Hunter, Christopher <Hunter.Christopher@epa.gov>; Monschein, Eric <Monschein.Eric@epa.gov>; Lewicki, Chris <Lewicki.Chris@epa.gov>  
**Subject:** RE: Deschutes paper

This version incorporates Chris' update on TMDL #s

Tom Wall, Director  
Watershed Restoration, Assessment and Protection Division  
Office of Wetlands, Oceans and Watersheds  
U.S. EPA  
[Wall.tom@epa.gov](mailto:Wall.tom@epa.gov)  
202/564-4179

---

**From:** Wall, Tom  
**Sent:** Tuesday, May 01, 2018 2:23 PM  
**To:** Havard, James <Havard.James@epa.gov>  
**Cc:** Hunter, Christopher <Hunter.Christopher@epa.gov>; Monschein, Eric <Monschein.Eric@epa.gov>; Lewicki, Chris <Lewicki.Chris@epa.gov>  
**Subject:** RE: Deschutes paper

Thank you, some very minor edits in the attached version (sorry, didn't use redline)

How does look for text for a cover email:

---

Dave/Lee/Benita

We previously informed Dave of the need to seek more time from the district court in Western Washington to make a decision on approving or disapproving more 73 TMDLs submitted by Washington State in 2015; EPA had been challenged for delays in taking action on those TMDLs. We now have until June 29 to act.

# Ex. 5 Deliberative Process (DP)

We understand the RA is generally aware of this issue but is not scheduled to be briefed in detail by Region 10 staff on their recommendations until late May, which that means there won't be much time for interaction with the Region before the June 29 deadline. Thus, in the event Dave may wish to talk to the RA sooner, we prepared the attached paper to provide more background information on the issue and the reasons for the potential disapprovals. Dave may wish to review the paper and call the RA?

We can provide additional information if that would be helpful.

---

202/564-4179

---

**From:** Havard, James  
**Sent:** Tuesday, May 01, 2018 9:58 AM  
**To:** Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>  
**Cc:** Hunter, Christopher <[Hunter.Christopher@epa.gov](mailto:Hunter.Christopher@epa.gov)>; Monschein, Eric <[Monschein.Eric@epa.gov](mailto:Monschein.Eric@epa.gov)>; Lewicki, Chris <[Lewicki.Chris@epa.gov](mailto:Lewicki.Chris@epa.gov)>  
**Subject:** Deschutes paper

Hi Tom –

John had asked for a Deschutes update paper this week. Thanks to Chris Hunter, who prepared the attached draft. Can you take a look/send on to John? Thanks!

Jim

Message

---

**From:** Havard, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9350676809E8403994F1DFC2B7BFDCFE-JHAVARD]  
**Sent:** 5/21/2018 5:37:06 PM  
**To:** Lewicki, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7688d5b97aa94ba6af2f38984d479b56-CLewicki]  
**Subject:** RE: Deschutes TMDL Brief for the RA

Call is wrapping up. I'll give you an update when I see you.

John's decision was not to have Ross invited, and for me to attend (with you in the room with me if you'd like/avail). See my message to Tom from last week.

---

**From:** Lewicki, Chris  
**Sent:** Monday, May 21, 2018 1:28 PM  
**To:** Havard, James <Havard.James@epa.gov>  
**Subject:** RE: Deschutes TMDL Brief for the RA

Dial my cell phone in.

Ex. 6 Personal Privacy (PP)

Sorry I didn't have this on my calendar. Appointment says cancelled

---

**From:** Havard, James  
**Sent:** Monday, May 21, 2018 1:15 PM  
**To:** Curtin, James <curtin.james@epa.gov>; Lewicki, Chris <Lewicki.Chris@epa.gov>  
**Cc:** Hunter, Christopher <Hunter.Christopher@epa.gov>  
**Subject:** RE: Deschutes TMDL Brief for the RA

It started up now. The RA focusing on "completeness" of the State package. . . .

---

**From:** Curtin, James  
**Sent:** Monday, May 21, 2018 1:06 PM  
**To:** Havard, James <Havard.James@epa.gov>; Lewicki, Chris <Lewicki.Chris@epa.gov>  
**Cc:** Hunter, Christopher <Hunter.Christopher@epa.gov>  
**Subject:** RE: Deschutes TMDL Brief for the RA

Do you guys hear anything?

*Jim*

Jim Curtin  
USEPA Office of General Counsel  
Water Law Office  
202-564-5482  
William Jefferson Clinton North Rm. 7451

---

**From:** Havard, James  
**Sent:** Monday, May 21, 2018 12:55 PM  
**To:** Lewicki, Chris <Lewicki.Chris@epa.gov>  
**Cc:** Curtin, James <curtin.james@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>  
**Subject:** RE: Deschutes TMDL Brief for the RA

Chris – If by chance you will be joining, Please let me know and I'll call you in.

-----Original Appointment-----

**From:** Hladick, Christopher  
**Sent:** Thursday, May 17, 2018 11:59 AM  
**To:** Hladick, Christopher; Opalski, Dan; Brown, Leah; Croxton, David; Mann, Laurie; Hodgkiss, Miranda; Zell, Christopher  
**Cc:** Steiner-Riley, Cara; Stern, Allyn; Chung, Angela; Havard, James; Curtin, James  
**Subject:** Deschutes TMDL Brief for the RA  
**When:** Monday, May 21, 2018 10:00 AM - 11:00 AM (UTC-08:00) Pacific Time (US & Canada).  
**Where:** ET Conference Room, Conf Line: **Ex. 6 Personal Privacy (PP)**

POC: Miranda Hodgkiss

05/18/2018: revised attendees, revised Briefing Document via email from Miranda / P Gahner

Message

**From:** Havard, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9350676809E8403994F1DFC2B7BFDCFE-JHAVARD]  
**Sent:** 4/16/2018 1:27:51 PM  
**To:** Wall, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=128011ac603c4d1a82301ada1bdfd733-Twall]  
**CC:** Lewicki, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7688d5b97aa94ba6af2f38984d479b56-CLewicki]; Hunter, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32905162cc58495da107db89c7dea903-Hunter, Chr]  
**Subject:** FW: Question for Croxton and Leah Re: Deschutes TMDLs

FYI, Region not planning to brief the RA until end of May. Let's discuss game plan. Seems to me that summary materials (e.g., short briefing documents) are needed for the RA (and AA) and that the Region should have the lead in preparing those, with our help.

---

**From:** Croxton, David  
**Sent:** Friday, April 13, 2018 7:24 PM  
**To:** Lewicki, Chris <Lewicki.Chris@epa.gov>; Brown, Leah <Brown.Leah@epa.gov>  
**Cc:** Havard, James <Havard.James@epa.gov>; Monschein, Eric <Monschein.Eric@epa.gov>; Opalski, Dan <Opalski.Dan@epa.gov>; Hodgkiss, Miranda <Hodgkiss.Miranda@epa.gov>  
**Subject:** RE: Question for Croxton and Leah Re: Deschutes TMDLs

Hi-  
Miranda and I met with Dan today to discuss process steps and help answer your questions.

## Ex. 5 Deliberative Process (DP)

### Ex. 5 Deliberative Process (DP)

We plan to share a draft decision document with you and OGC by the week of 4/30. We could also set-up a Division/Office briefing for that week if desired. We want to allow a couple weeks for input by HQ and to sort-out changes. The Region would then be in good position to brief the RA by the last week of May.

We would leave the matter to you and the AA of whether the AA wants to just be in discussion with the RA or have a briefing from the Region. We expect that a formal briefing for both of them will not be needed.

I understand that you may be feeling the need to get information to the AA sooner than the end of May and certainly you have the information from our other briefings.

### Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

Thanks,  
Dave

---

**From:** Lewicki, Chris  
**Sent:** Thursday, April 12, 2018 5:32 PM



**To:** Brown, Leah <Brown.Leah@epa.gov>; Croxton, David <Croxton.David@epa.gov>  
**Cc:** Havard, James <Havard.James@epa.gov>; Monschein, Eric <Monschein.Eric@epa.gov>  
**Subject:** Question for Croxton and Leah Re: Deschutes TMDLs  
**Importance:** High

Leah/Dave,

Chris Hunter Ex. 6 Personal Privacy (PP) prepared TPs on the Deschutes TMDL litigation. One of the things he said is *"A briefing is being scheduled for the R10 RA and David Ross to discuss options for approval/disapproval of the TMDLs and next steps for beginning EPA's work on any required TMDL replacements."*

Our D, Tom Wall, has asked me *"I thought the bidding was the Region will brief the RA, then the RA and Dave will talk if the Region is planning to go forward with some disapprovals?"*

Can you please let me know what the current plan is regarding briefing of the RA and OW's AA (David Ross) and anticipated number of pollutant/segment disapprovals.

## Ex. 5 Deliberative Process (DP)

I need this answer Friday .

Thanks

Chris Lewicki  
CWA 303(d) Litigation Coordinator  
Watershed Branch  
Office of Wetlands, Oceans and Watersheds  
202-566-1293

*Chris Lewicki*

Message

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**From:** Havard, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9350676809E8403994F1DFC2B7BFDCFE-JHAVARD]  
**Sent:** 6/11/2018 7:56:48 PM  
**To:** Wall, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=128011ac603c4d1a82301ada1bdfd733-Twall]  
**CC:** Hunter, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32905162cc58495da107db89c7dea903-Hunter, Chr]; Monschein, Eric [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=110281a30e814820830c14fa5075ff90-EMonsche]; Lewicki, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7688d5b97aa94ba6af2f38984d479b56-CLewicki]  
**Subject:** FW: Latest Deschutes Info

Tom – Can you forward this on as our recommendation to John? Thanks!

---

**From:** Hunter, Christopher  
**Sent:** Monday, June 11, 2018 3:54 PM  
**To:** Havard, James <Havard.James@epa.gov>  
**Cc:** Lewicki, Chris <Lewicki.Chris@epa.gov>; Monschein, Eric <Monschein.Eric@epa.gov>; Wall, Tom <Wall.Tom@epa.gov>  
**Subject:** RE: Latest Deschutes Info

Jim and Tom,

## Ex. 5 Deliberative Process (DP)

I agree that John should thank Dan for the updated information and forward the information to Dave R – but also remind Dan that Dave is waiting for the RA's call to discuss, and that needs to happen as soon as possible in order to meet the June 29<sup>th</sup> deadline.

Chris

Chris Hunter  
202.566.1454  
Watershed Branch, Office of Water  
US Environmental Protection Agency

---

**From:** Havard, James  
**Sent:** Monday, June 11, 2018 2:58 PM  
**To:** Hunter, Christopher <Hunter.Christopher@epa.gov>  
**Cc:** Lewicki, Chris <Lewicki.Chris@epa.gov>; Monschein, Eric <Monschein.Eric@epa.gov>; Wall, Tom <Wall.Tom@epa.gov>  
**Subject:** FW: Latest Deschutes Info

Chris –

Please provide a recommendation on what John should do.

I imagine he should tell Dan “thanks for the update” and forward the revised paper to Dave R and say “Dave: Here is a revised paper/enclosure. We understand the RA plans to reach out shortly.”

Further thoughts?

Can you verify if the paper has changed substantially?

Thanks!

---

**From:** Goodin, John  
**Sent:** Monday, June 11, 2018 2:45 PM  
**To:** Wall, Tom <Wall.Tom@epa.gov>; Havard, James <Havard.James@epa.gov>  
**Subject:** FW: Latest Deschutes Info

Folks—would you give these a look and advise on my response ASAP to Dan (and to Lee/Dave)?  
Thanks,  
John

---

**From:** Opalski, Dan  
**Sent:** Monday, June 11, 2018 1:47 PM  
**To:** Goodin, John <Goodin.John@epa.gov>  
**Subject:** FW: Latest Deschutes Info

John – FYI. If any thoughts or insights, please let me know if it would be good to talk. Thx.

---

**From:** Opalski, Dan  
**Sent:** Friday, June 8, 2018 11:14 AM  
**To:** Hladick, Christopher <hladick.christopher@epa.gov>  
**Cc:** Gahner, Pamela <gahner.pamela@epa.gov>  
**Subject:** Latest Deschutes Info

Chris –

Not knowing exactly when/how you may have an opportunity with Lee and Dave, here is an updated version of the briefing paper we did for you, including an updated version of the table that summarizes the action by segment/pollutant. As I mentioned, I believe Dave received copies of the original package we provided to you for your 5/21 briefing.

The further summary of the table by category is as follows:

## Ex. 5 Deliberative Process (DP)

There is a relatively minor chance of some tweaks to the numbers by category as we work through the final round of staff and mid-manager level review in HQ, but I think the current info conveys the approach clearly enough.

Please let me know if you want us to put together anything more/different.

Dan Opalski  
Director  
Office of Water and Watersheds

U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101  
206-553-1855  
FAX: 206-553-1280

Message

---

**From:** Havard, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9350676809E8403994F1DFC2B7BFDCFE-JHAVARD]  
**Sent:** 4/11/2018 9:15:42 PM  
**To:** Wall, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=128011ac603c4d1a82301ada1bdfd733-Twall]  
**Subject:** RE: feedback from Dave Ross re: Deschutes TMDLs

Two thoughts.

---

**From:** Wall, Tom  
**Sent:** Wednesday, April 11, 2018 3:04 PM  
**To:** Havard, James <Havard.James@epa.gov>  
**Subject:** RE: feedback from Dave Ross re: Deschutes TMDLs

What do you think?

---

Thanks Dan/Dave, we wouldn't put together a paper about these disapprovals without coordinating with you all and that sounds like extra work. Maybe we can share with Dave the paper with details you all are working on for Chris. We'll be sure to let him know we've been working with you all. Dave can call Chris if he has any issues he wants to discuss?

## Ex. 5 Deliberative Process (DP)

---

**From:** Opalski, Dan  
**Sent:** Wednesday, April 11, 2018 12:11 PM  
**To:** Wall, Tom <Wall.Tom@epa.gov>  
**Cc:** Goodin, John <Goodin.John@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Havard, James <Havard.James@epa.gov>; Chung, Angela <Chung.Angela@epa.gov>; Croxton, David <Croxton.David@epa.gov>  
**Subject:** Re: feedback from Dave Ross re: Deschutes TMDLs

Tom — Thanks for the call and this follow-up. As in most of these matters, I think it also is important that Dave is hearing from HQ folks given the considerable amount of time some of the staff have invested with us already. (The note to Dave refers to our intended action, but does not provide any indication of review or involvement by HQ staff.) If we need to talk more before Chris and Dave communicate, especially about potentially differences regarding the quality/approvability of the TMDLs, please let me know. We will proceed in the meantime to get Chris more info on the details — he already is aware of the status in general. Thanks again.

Sent from my iPhone

On Apr 10, 2018, at 2:50 PM, Wall, Tom <Wall.Tom@epa.gov> wrote:

Hi Dan — following up on our conversation, see highlighted text. We'll be happy to work with you to help tee this up on the timeline that's needed. Thank you,

Tom Wall, Director

Watershed Restoration, Assessment and Protection Division  
Office of Wetlands, Oceans and Watersheds  
U.S. EPA  
[Wall.tom@epa.gov](mailto:Wall.tom@epa.gov)  
202/564-4179

**From:** Ross, David P  
**Sent:** Thursday, March 22, 2018 4:17 PM  
**To:** Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)>  
**Cc:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>; Best-Wong, Benita <[Best-Wong.Benita@epa.gov](mailto:Best-Wong.Benita@epa.gov)>;  
Campbell, Ann <[Campbell.Ann@epa.gov](mailto:Campbell.Ann@epa.gov)>; Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>  
**Subject:** Re: Request for Input on Litigation Stays for Two TMDL-Related Matters

Hi Sandra,

First question. Is the James River case **Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

Regarding the Deschutes River matter, **Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

I will weigh in on the James River matter after you answer my question above. Thanks.

Dave

Sent from my iPad

On Mar 21, 2018, at 7:14 PM, Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)> wrote:

### **DELIBERATIVE**

Dave - We recommend your support for the proposed paths identified below in litigation related to the Chesapeake Bay (CB) TMDLs and the Deschutes River TMDLs. We would be happy to provide additional background or briefings as desired.

CB TMDL: **Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

## Ex. 5 Deliberative Process (DP)

Deschutes River:

Ex. 5 Attorney Client (AC)

## Ex. 5 Attorney Client (AC)

If you are comfortable with these approaches, we will convey that to OGC.

Thanks,

*Sandra*

---

Sandra L. Connors  
Deputy Director

Office of Wetlands, Oceans, and Watersheds  
US Environmental Protection Agency, MC 4501T  
1200 Pennsylvania Avenue, WJCW 7130A  
Washington, DC 20460  
(202)564-4231

[connors.sandra@epa.gov](mailto:connors.sandra@epa.gov)

**From:** [Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)

**Date:** March 9, 2018 at 11:55:24 AM CST

**To:** [ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)

**Cc:** Lee Forsgren <[forsgren.lee@epa.gov](mailto:forsgren.lee@epa.gov)>, Tom Wall <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>, [Havard.James@epa.gov](mailto:Havard.James@epa.gov)

**Subject:** FYI: Deschutes TMDL Joint Status Report Filing Today

DELIBERATE

Dave— As mentioned at staff meeting Monday, today DOJ and plaintiff are filing a joint status report in Northwest Environmental Advocates v EPA, USDC, W.D. of Washington. This case alleges EPA failed to carry out its nondiscretionary duty to approve or disapprove the Deschutes River TMDLs within thirty days after submission by the State. The TMDL submission by the State involves

73 water segments and 5 pollutants, and was submitted in 2015 and supplemented in 2017.

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

Happy to discuss the TMDL timing issue as we move forward.

Thanks  
John

Sent from my iPhone



Message

**From:** Havard, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9350676809E8403994F1DFC2B7BFDCFE-JHAVARD]  
**Sent:** 4/11/2018 4:33:38 PM  
**To:** Wall, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=128011ac603c4d1a82301ada1bdfd733-Twall]  
**Subject:** FW: feedback from Dan O re: Deschutes TMDLs and meeting with OR re: gameplan for OR TMDLs/SSC

FYI

---

**From:** Hunter, Christopher  
**Sent:** Wednesday, April 11, 2018 12:30 PM  
**To:** Havard, James <Havard.James@epa.gov>  
**Cc:** Lewicki, Chris <Lewicki.Chris@epa.gov>  
**Subject:** RE: feedback from Dan O re: Deschutes TMDLs and meeting with OR re: gameplan for OR TMDLs/SSC

OK, just called Dave C. Sounds like the PPA meeting with OR is next week, but everyone realizes that the TMDL issues are going to be too big to handle at that meeting, so a full-day meeting is being scheduled to brainstorm the options for dealing with temperature in OR. Dave wasn't sure it had been confirmed yet, but they were looking at June 7

Chris Hunter  
202.566.1454  
Watershed Branch, Office of Water  
US Environmental Protection Agency

---

**From:** Havard, James  
**Sent:** Wednesday, April 11, 2018 11:40 AM  
**To:** Hunter, Christopher <Hunter.Christopher@epa.gov>  
**Cc:** Lewicki, Chris <Lewicki.Chris@epa.gov>  
**Subject:** FW: feedback from Dan O re: Deschutes TMDLs and meeting with OR re: gameplan for OR TMDLs/SSC

Know anything about the June 7 meeting? If not, can you please find out. Thanks.

---

**From:** Wall, Tom  
**Sent:** Tuesday, April 10, 2018 6:12 PM  
**To:** Havard, James <Havard.James@epa.gov>; Monschein, Eric <Monschein.Eric@epa.gov>  
**Cc:** Goodin, John <Goodin.John@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Hisel-McCoy, Sara <Hisel-McCoy.Sara@epa.gov>  
**Subject:** feedback from Dan O re: Deschutes TMDLs and meeting with OR re: gameplan for OR TMDLs/SSC

Re: Deschutes, Dan said that any discussion between RA and Dave should happen soon. RA is briefed and understands that a number of TMDLs will likely need to be disapproved.

Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

Re: OR gameplan for TMDLs/SSCs

Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

Tom Wall, Director  
Watershed Restoration, Assessment and Protection Division

Office of Wetlands, Oceans and Watersheds  
U.S. EPA  
[Wall.tom@epa.gov](mailto:Wall.tom@epa.gov)  
202/564-4179

---

**From:** Wall, Tom  
**Sent:** Tuesday, April 10, 2018 5:51 PM  
**To:** Opalski, Dan <[Opalski.Dan@epa.gov](mailto:Opalski.Dan@epa.gov)>  
**Cc:** Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>; Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>  
**Subject:** feedback from Dave Ross re: Deschutes TMDLs

Hi Dan – following up on our conversation, see highlighted text. We'll be happy to work with you to help tee this up on the timeline that's needed. Thank you,

Tom Wall, Director  
Watershed Restoration, Assessment and Protection Division  
Office of Wetlands, Oceans and Watersheds  
U.S. EPA  
[Wall.tom@epa.gov](mailto:Wall.tom@epa.gov)  
202/564-4179

---

**From:** Ross, David P  
**Sent:** Thursday, March 22, 2018 4:17 PM  
**To:** Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)>  
**Cc:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>; Best-Wong, Benita <[Best-Wong.Benita@epa.gov](mailto:Best-Wong.Benita@epa.gov)>; Campbell, Ann <[Campbell.Ann@epa.gov](mailto:Campbell.Ann@epa.gov)>; Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>  
**Subject:** Re: Request for Input on Litigation Stays for Two TMDL-Related Matters

Hi Sandra,

First question. Is the James River case

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

Regarding the Deschutes River matter,

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

I will weigh in on the James River matter after you answer my question above. Thanks.

Dave

Sent from my iPad

On Mar 21, 2018, at 7:14 PM, Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)> wrote:

DELIBERATIVE

Dave - We recommend your support for the proposed paths identified below in litigation related to the Chesapeake Bay (CB) TMDLs and the Deschutes River TMDLs. We would be happy to provide additional background or briefings as desired.

CB TMDL:

**Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

Deschutes River:

**Ex. 5 Attorney Client (AC)**

## **Ex. 5 Attorney Client (AC)**

If you are comfortable with these approaches, we will convey that to OGC.

Thanks,

*Sandra*

---

Sandra L. Connors  
Deputy Director

Office of Wetlands, Oceans, and Watersheds  
US Environmental Protection Agency, MC 4501T  
1200 Pennsylvania Avenue, WJCW 7130A  
Washington, DC 20460  
(202)564-4231

[connors.sandra@epa.gov](mailto:connors.sandra@epa.gov)

**From:** [Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)

**Date:** March 9, 2018 at 11:55:24 AM CST

**To:** [ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)

**Cc:** Lee Forsgren <[forsgren.lee@epa.gov](mailto:forsgren.lee@epa.gov)>, Tom Wall <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>,  
[Havard.James@epa.gov](mailto:Havard.James@epa.gov)

**Subject:** FYI: Deschutes TMDL Joint Status Report Filing Today

DELIBERATE

Dave— As mentioned at staff meeting Monday, today DOJ and plaintiff are filing a joint status report in Northwest Environmental Advocates v EPA, USDC, W.D. of Washington. This case alleges EPA failed to carry out its nondiscretionary duty to approve or disapprove the Deschutes River TMDLs within thirty days after submission by the State. The TMDL submission by the State involves 73 water segments and 5 pollutants, and was submitted in 2015 and supplemented in 2017.

**Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

Happy to discuss the TMDL timing issue as we move forward.

Thanks  
John

Sent from my iPhone

Message

---

**From:** Havard, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9350676809E8403994F1DFC2B7BFDCFE-JHAVARD]  
**Sent:** 6/11/2018 5:25:45 PM  
**To:** Wall, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=128011ac603c4d1a82301ada1bdfd733-Twall]  
**Subject:** FW: Deschutes  
**Attachments:** 5-21-18 Deschutes R10 ORA Briefing\_6-8-18 update.docx; Enclosure\_ORA 5-21 briefing\_6-8-18 update.docx

FYI, Tom, a small update to the paper from Region 10.

---

**From:** Hodgkiss, Miranda  
**Sent:** Friday, June 08, 2018 1:48 PM  
**To:** Havard, James <Havard.James@epa.gov>  
**Cc:** Lewicki, Chris <Lewicki.Chris@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; Croxton, David <Croxton.David@epa.gov>  
**Subject:** RE: Deschutes

Hi Jim,

As an FYI, Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) Also, Dan is trying to touch base with Chris Hladick to prepare him for a conversation with Dave Ross (but I understand that Dave Ross might be tied up with WOTUS activities for the next week or so).

Let me know if you need anything else.

Thanks,

Miranda Hodgkiss  
Office of Water and Watersheds  
U.S. EPA Region 10  
(206) 553-0692  
[hodgkiss.miranda@epa.gov](mailto:hodgkiss.miranda@epa.gov)

---

**From:** Hunter, Christopher  
**Sent:** Thursday, June 7, 2018 2:33 PM  
**To:** Havard, James <Havard.James@epa.gov>  
**Cc:** Hodgkiss, Miranda <[Hodgkiss.Miranda@epa.gov](mailto:Hodgkiss.Miranda@epa.gov)>; Lewicki, Chris <[Lewicki.Chris@epa.gov](mailto:Lewicki.Chris@epa.gov)>  
**Subject:** Re: Deschutes

Hi Jim,

Monday would be better for a time to meet. Miranda needs to allow for about 2 weeks to get the finalized document done and through the regional approval process, so she's hoping to start it moving by mid-week. I'm hoping Jim C will be able to review tomorrow and we can wrap up with any remaining comments quickly then on Monday.

Thanks

Chris Hunter  
Watershed Branch, Office of Water  
US Environmental Protection Agency

On Jun 7, 2018, at 2:24 PM, Havard, James <[HavardJames@epa.gov](mailto:HavardJames@epa.gov)> wrote:

Hi Chris (and Miranda!) – I just got your message. I'll be here for another 20 minutes or so and then need to head out. I was planning on getting an update from you (Chris) and Chris L and be informed by Jim C's comments before providing my views. Based on your earlier message, and info about Jim C's review, I had set up time for the 4 of us in HQ to talk next week to see what issues remain for us. Will that work? I can move up our meeting to Monday to further expedite. Jim

202-564-5544

Message

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**From:** Havard, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9350676809E8403994F1DFC2B7BFDCFE-JHAVARD]  
**Sent:** 6/27/2018 3:30:41 PM  
**To:** Curtin, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=728048227d024e0cb67932883007a4f9-JCURTIN]  
**CC:** Lewicki, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7688d5b97aa94ba6af2f38984d479b56-CLewicki]; Hunter, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32905162cc58495da107db89c7dea903-Hunter, Chr]  
**Subject:** FW: Deschutes Bullets for David F

Jim – Can you drop the underline? I think it is in the last bullet. Thanks! Jim

---

**From:** Goodin, John  
**Sent:** Wednesday, June 27, 2018 11:00 AM  
**To:** Havard, James <Havard.James@epa.gov>  
**Subject:** Re: Deschutes Bullets for David F

Thanks. Looks good. Drop the underlining.  
Thanks!

Sent from my iPhone

On Jun 27, 2018, at 10:48 AM, Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)> wrote:

Here are comments from the WB. Looping in John Goodin as well in case he will review as well.

Thanks

Jim

---

**From:** Schroer, Lee  
**Sent:** Wednesday, June 27, 2018 8:49 AM  
**To:** Brown, Leah <[Brown.Leah@epa.gov](mailto:Brown.Leah@epa.gov)>; Curtin, James <[curtin.james@epa.gov](mailto:curtin.james@epa.gov)>; Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>  
**Cc:** Stern, Allyn <[Stern.Allyn@epa.gov](mailto:Stern.Allyn@epa.gov)>; Steiner-Riley, Cara <[Steiner-Riley.Cara@epa.gov](mailto:Steiner-Riley.Cara@epa.gov)>; Hodgkiss, Miranda <[Hodgkiss.Miranda@epa.gov](mailto:Hodgkiss.Miranda@epa.gov)>; Croxton, David <[Croxton.David@epa.gov](mailto:Croxton.David@epa.gov)>  
**Subject:** RE: Deschutes Bullets for David F

Jim,

I added some comments on Leah's version.

Lee C. Schroer  
Office of General Counsel (Mail Code 2355A)  
Room 7518C William Jefferson Clinton Bldg North  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460  
Tel: 202-564-5476

---

**From:** Brown, Leah  
**Sent:** Tuesday, June 26, 2018 8:41 PM  
**To:** Curtin, James <curtin.james@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Schroer, Lee <schroer.lee@epa.gov>; Havard, James <Havard.James@epa.gov>  
**Cc:** Stern, Allyn <Stern.Allyn@epa.gov>; Steiner-Riley, Cara <Steiner-Riley.Cara@epa.gov>; Hodgkiss, Miranda <Hodgkiss.Miranda@epa.gov>; Croxton, David <Croxton.David@epa.gov>  
**Subject:** RE: Deschutes Bullets for David F

Thanks, Jim. My comments are attached.

**Ex. 5 Attorney Client (AC)**

## **Ex. 5 Attorney Client (AC)**

---

Leah Brown  
Assistant Regional Counsel  
(206) 553-8694  
[brown.leah@epa.gov](mailto:brown.leah@epa.gov)

---

**From:** Curtin, James  
**Sent:** Tuesday, June 26, 2018 2:50 PM  
**To:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Schroer, Lee <schroer.lee@epa.gov>; Havard, James <Havard.James@epa.gov>; Brown, Leah <Brown.Leah@epa.gov>  
**Subject:** Deschutes Bullets for David F

David F has asked me to prepare some bullets discussing any significant legal/programmatic issues in the proposed Deschutes decision. Here's a draft. If you get comments back to me by 10am Wednesday morning, I can get this to David by noon.

Thanks.

*Jim*

Jim Curtin  
USEPA Office of General Counsel  
Water Law Office  
202-564-5482  
William Jefferson Clinton North Rm. 7451

<Deschutes TMDL Decision Document Issues\_LB.LS.WB.docx>



Message

**From:** Havard, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9350676809E8403994F1DFC2B7BFDCFE-JHAVARD]  
**Sent:** 6/27/2018 1:09:29 PM  
**To:** Curtin, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=728048227d024e0cb67932883007a4f9-JCURTIN]  
**Subject:** RE: Deschutes Bullets for David F

Jim – We are in a meeting until 10 – Will look at it right after that and get back to you. Two initial thoughts;

Ex. 5 Attorney Client (AC)

## Ex. 5 Attorney Client (AC)

**From:** Schroer, Lee  
**Sent:** Wednesday, June 27, 2018 8:49 AM  
**To:** Brown, Leah <Brown.Leah@epa.gov>; Curtin, James <curtin.james@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Havard, James <Havard.James@epa.gov>  
**Cc:** Stern, Allyn <Stern.Allyn@epa.gov>; Steiner-Riley, Cara <Steiner-Riley.Cara@epa.gov>; Hodgkiss, Miranda <Hodgkiss.Miranda@epa.gov>; Croxton, David <Croxton.David@epa.gov>  
**Subject:** RE: Deschutes Bullets for David F

Jim,

I added some comments on Leah's version.

Lee C. Schroer  
Office of General Counsel (Mail Code 2355A)  
Room 7518C William Jefferson Clinton Bldg North  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460  
Tel: 202-564-5476

**From:** Brown, Leah  
**Sent:** Tuesday, June 26, 2018 8:41 PM  
**To:** Curtin, James <curtin.james@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Schroer, Lee <schroer.lee@epa.gov>; Havard, James <Havard.James@epa.gov>  
**Cc:** Stern, Allyn <Stern.Allyn@epa.gov>; Steiner-Riley, Cara <Steiner-Riley.Cara@epa.gov>; Hodgkiss, Miranda <Hodgkiss.Miranda@epa.gov>; Croxton, David <Croxton.David@epa.gov>  
**Subject:** RE: Deschutes Bullets for David F

Thanks, Jim. My comments are attached

Ex. 5 Attorney Client (AC)

## Ex. 5 Attorney Client (AC)

Leah Brown  
Assistant Regional Counsel  
(206) 553-8694  
[brown.leah@epa.gov](mailto:brown.leah@epa.gov)

---

**From:** Curtin, James

**Sent:** Tuesday, June 26, 2018 2:50 PM

**To:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Schroer, Lee <schroer.lee@epa.gov>; Havard, James <Havard.James@epa.gov>; Brown, Leah <Brown.Leah@epa.gov>

**Subject:** Deschutes Bullets for David F

David F has asked me to prepare some bullets discussing any significant legal/programmatic issues in the proposed Deschutes decision. Here's a draft. If you get comments back to me by 10am Wednesday morning, I can get this to David by noon.

Thanks.

*Jim*

Jim Curtin

USEPA Office of General Counsel

Water Law Office

202-564-5482

William Jefferson Clinton North Rm. 7451

Message

---

**From:** Havard, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9350676809E8403994F1DFC2B7BFDCFE-JHAVARD]  
**Sent:** 6/26/2018 5:41:03 PM  
**To:** Lewicki, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7688d5b97aa94ba6af2f38984d479b56-CLewicki]; Hunter, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32905162cc58495da107db89c7dea903-Hunter, Chr]  
**CC:** Curtin, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=728048227d024e0cb67932883007a4f9-JCURTIN]; Monschein, Eric [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=110281a30e814820830c14fa5075ff90-EMonsche]  
**Subject:** Deschutes update  
**Importance:** High

I just learned that Dave R will defer to the RA on the Deschutes action. Dave R did ask that OGC (and OWOW) be given an opportunity to review the document (we have and are) **Ex. 5 Deliberative Process (DP)**  
**Ex. 5 Deliberative Process (DP)** We have been reviewing with that question in mind, but I wanted to pass on that Dave R has emphasized this.

Message

---

**From:** Hodgkiss, Miranda [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9D441DDB44AC4ED486058D2C2690B977-HODGKISS, MIRANDA]  
**Sent:** 5/16/2018 11:37:03 PM  
**To:** Opalski, Dan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8b5ed6410d934bf699a008a252791a55-Opalski, Dan]  
**Subject:** Deschutes Briefing Materials

Hi Dan,

Here is the One Drive link to the briefing materials:

**Personal Privacy / Ex. 6**

Let me know if you have any other issues. Thanks!

Miranda Hodgkiss  
Office of Water and Watersheds  
U.S. EPA Region 10  
(206) 553-0692  
[hodgkiss.miranda@epa.gov](mailto:hodgkiss.miranda@epa.gov)



## Deschutes, WA Watershed TMDL

### I. TIMING

EPA has informed the Court that it intends to approve and/or disapprove the Deschutes Watershed TMDL by June 29, 2018. We anticipate the Court will enter an Order that we do so.

### II. PURPOSE

The draft decision document includes disapprovals of TMDLs for waters impaired by multiple pollutants submitted by Washington Department of Ecology (Ecology). The draft decision document also includes approvals of some of the state-submitted TMDLs.

### III. BACKGROUND/HISTORY

#### Timeline

<i>December 17, 2015</i>	Ecology submitted the final Deschutes TMDL to EPA for approval.
<i>July 17, 2017</i>	Ecology submitted supplemental TMDL information, including new bacteria loads and a temperature equation.
<i>September 6, 2017</i>	Northwest Environmental Advocates (NWEA) filed a complaint against EPA alleging violation of section 303(d)(2) of the Clean Water Act (CWA) for failure to act on the TMDL submission within the statutorily required 30-day timeframe.
<i>June 29, 2018</i>	Date by which EPA has said it will take action on the Deschutes TMDLs.

#### Background

The Washington Department of Ecology submitted the final Deschutes TMDL to EPA for approval on December 17, 2015. The TMDL addresses 73 waterbody-pollutant pairs for five pollutants – fecal coliform, temperature, dissolved oxygen (DO), pH, and fine sediment. EPA must approve or disapprove each waterbody-pollutant pair – essentially requiring 73 individual decisions to either approve or disapprove loadings developed for a waterbody-pollutant pair. Region 10 OWW and ORC have been consulting with counterparts at Headquarters in the Watershed Branch and Office of General Counsel (OGC) regarding the Agency's planned action on this TMDL.

This TMDL is the first phase of a multi-phase process to address water quality impairments for waters flowing into south Puget Sound. The watershed addressed in this phase includes the Deschutes River and its tributaries, Percival Creek, and the tributaries to Budd Inlet. The Deschutes River originates in heavily forested regions of the Bald Hills, then flows northward into Capitol Lake (in Olympia), then into Budd Inlet (south Puget Sound). Capitol Lake was formed in 1951 as an impoundment of the Deschutes estuary to create a reflecting pool for the State Capitol Building. The TMDL watershed is situated within the boundaries of Thurston and Lewis Counties, Washington, and includes the cities or towns of Olympia, Lacey, Tumwater, and Rainier. Ecology has stated that a second phase of the TMDL to address the marine segments of Budd Inlet, impaired for DO and bacteria, is planned for completion in 2021. No plans have been made by Ecology to develop a TMDL for Capitol Lake, which is impaired for total phosphorus and bacteria.

#### Litigation

On September 6, 2017, NWEA filed a complaint against EPA alleging violation of section 303(d)(2) of the CWA for failure to act on the Deschutes River TMDL submission. Section 303(d)(2) requires EPA to either approve or disapprove a state's TMDL submission within 30 days of submittal. EPA has represented in recent court filings that it will complete its action no later than June 29, 2018, and it is likely that the court will soon order EPA to complete its action by this date.

#### **IV. KEY ISSUES**

The Agency has discussed its concerns about the TMDL's failure to meet statutory and regulatory requirements with the State since early 2016. One reason the Agency has not yet acted is because we worked with Ecology for over a year to attempt to remedy issues with the bacteria and temperature TMDLs. As a result, Ecology submitted supplemental TMDL information in July 2017, including new bacteria loads and a temperature equation. However, the July 2017 submittal failed to remedy all of EPA's concerns and did not meet public process requirements.

Once EPA disapproves a TMDL, CWA section 303(d)(2) requires the Agency to develop a new TMDL within 30 days. Thus, for the waterbody-pollutant pairs we disapprove, we will need to develop revised TMDLs that remedy our concerns.

## **Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

#### **V. ROLL-OUT / COMMUNICATIONS PLAN**

Other than notifying the State, NWEA, and the court of our final action, a communication plan has not been developed, nor is one anticipated to be necessary.

#### **VI. NEXT STEPS / UPCOMING DEADLINES**

The Region has developed an anticipated schedule for meeting the June 29<sup>th</sup> deadline. This was put forth to the court in a declaration filed on April 4, 2018, by David Croxton, the Watershed Unit manager. The following steps represent our planned course for developing decision documents and briefing management:

- *April 23 – May 18:* R10 OWW, ORC, OGC and Office of Water (Headquarters) review draft decision document.
- *May 28 – June 15:* R10 Watershed Unit shares draft decision document with RA, Office of Water AA, and OGC for senior management review.
- *June 18 – June 28:* R10 Watershed Unit finalizes review.
- *June 29:* Agency finalizes Deschutes TMDL decision document and takes final action on TMDL.

Message

**From:** Opalski, Dan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8B5ED6410D934BF699A008A252791A55-OPALSKI, DAN]  
**Sent:** 4/11/2018 4:11:15 PM  
**To:** Wall, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=128011ac603c4d1a82301ada1bdfd733-Twall]  
**CC:** Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Connors, Sandra [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cc4f8f838be74de797ba9f894a0bc7b5-SCONNORS]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Chung, Angela [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b3e49fcba1ad46f1bdbe92ebb4936350-Chung, Angela]; Croxton, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ca7b9940863640d5b96f4295ea3c9641-Croxton, Dave]  
**Subject:** Re: feedback from Dave Ross re: Deschutes TMDLs

Tom — Thanks for the call and this follow-up. As in most of these matters, I think it also is important that Dave is hearing from HQ folks given the considerable amount of time some of the staff have invested with us already. (The note to Dave refers to our intended action, but does not provide any indication of review or involvement by HQ staff.) If we need to talk more before Chris and Dave communicate, especially about potentially differences regarding the quality/approvability of the TMDLs, please let me know. We will proceed in the meantime to get Chris more info on the details — he already is aware of the status in general. Thanks again.

Sent from my iPhone

On Apr 10, 2018, at 2:50 PM, Wall, Tom <Wall.Tom@epa.gov> wrote:

Hi Dan – following up on our conversation, see highlighted text. We'll be happy to work with you to help tee this up on the timeline that's needed. Thank you,

Tom Wall, Director

Watershed Restoration, Assessment and Protection Division

Office of Wetlands, Oceans and Watersheds

U.S. EPA

[Wall.tom@epa.gov](mailto:Wall.tom@epa.gov)

202/564-4179

**From:** Ross, David P

**Sent:** Thursday, March 22, 2018 4:17 PM

**To:** Connors, Sandra <Connors.Sandra@epa.gov>

**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>;

Campbell, Ann <Campbell.Ann@epa.gov>; Wall, Tom <Wall.Tom@epa.gov>

**Subject:** Re: Request for Input on Litigation Stays for Two TMDL-Related Matters

Hi Sandra,

First question. Is the James River case

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

Regarding the Deschutes River matter,

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

Dave



Sent from my iPad

On Mar 21, 2018, at 7:14 PM, Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)> wrote:

DELIBERATIVE

Dave - We recommend your support for the proposed paths identified below in litigation related to the Chesapeake Bay (CB) TMDLs and the Deschutes River TMDLs. We would be happy to provide additional background or briefings as desired.

CB TMDL:

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

Deschutes River:

**Ex. 5 Attorney Client (AC)**

**Ex. 5 Attorney Client (AC)**

Thanks,

Sandra

---

Sandra L. Connors  
Deputy Director

Office of Wetlands, Oceans, and Watersheds  
US Environmental Protection Agency, MC 4501T  
1200 Pennsylvania Avenue, WJCW 7130A  
Washington, DC 20460  
(202)564-4231

[connors.sandra@epa.gov](mailto:connors.sandra@epa.gov)

**From:** [Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)

**Date:** March 9, 2018 at 11:55:24 AM CST

**To:** [ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)

**Cc:** Lee Forsgren <[forsgren.lee@epa.gov](mailto:forsgren.lee@epa.gov)>, Tom Wall <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>,

Havard.James@epa.gov

**Subject: FYI: Deschutes TMDL Joint Status Report Filing Today**

DELIBERATE

Dave— As mentioned at staff meeting Monday, today DOJ and plaintiff are filing a joint status report in Northwest Environmental Advocates v EPA, USDC, W.D. of Washington. This case alleges EPA failed to carry out its nondiscretionary duty to approve or disapprove the Deschutes River TMDLs within thirty days after submission by the State. The TMDL submission by the State involves 73 water segments and 5 pollutants, and was submitted in 2015 and supplemented in 2017.

Ex. 5 Deliberative Process (DP)

## **Ex. 5 Deliberative Process (DP)**

Happy to discuss the TMDL timing issue as we move forward.

Thanks

John

Sent from my iPhone

Message

**From:** Opalski, Dan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8B5ED6410D934BF699A008A252791A55-OPALSKI, DAN]  
**Sent:** 6/4/2018 10:32:22 PM  
**To:** Croxton, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ca7b9940863640d5b96f4295ea3c9641-Croxton, Dave]  
**Subject:** Re: Deschutes -- Quick update on briefing with RA

Thx. I will talk to Chris. **Ex. 5 Deliberative Process (DP)**

Sent from my iPhone

On Jun 4, 2018, at 3:30 PM, Croxton, David <Croxton.David@epa.gov> wrote:

Dan,  
Goodin's message below indicates that Hladick is calling Ross about Deschutes TMDL, and Havard is asking if this has occurred. Is Hladick on the hook to do so, has that contact occurred?  
thanks

---

**From:** Havard, James  
**Sent:** Monday, June 4, 2018 6:21 AM  
**To:** Croxton, David <Croxton.David@epa.gov>  
**Cc:** Hodgkiss, Miranda <Hodgkiss.Miranda@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; Lewicki, Chris <Lewicki.Chris@epa.gov>  
**Subject:** FW: Deschutes -- Quick update on briefing with RA

Hi Dave –

Welcome back! Please see below. Do you know if the RA has connected with Dave Ross yet?

Thanks!

Jim

---

**From:** Goodin, John  
**Sent:** Tuesday, May 22, 2018 2:19 PM  
**To:** Ross, David P <ross.davidp@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Cc:** Campbell, Ann <Campbell.Ann@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Wall, Tom <Wall.Tom@epa.gov>; Havard, James <Havard.James@epa.gov>  
**Subject:** Deschutes -- Quick update on briefing with RA

Afternoon, Dave—as referenced last week, what follows is a quick download on the Deschutes briefing for the R10 RA yesterday, via Branch Chief Jim Havard, who was invited to listen. **Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)** A few additional points:

- The RA plans to call you (likely sometime later this week) to discuss the matter
- The RA asked the Regional program to provide a status update to the State of WA (Dept of Ecology and also potentially the Governor's office) before acting
- The Region, OWOW, and OGC are preparing materials in anticipation of acting by the June 29<sup>th</sup> deadline.

I've attached the briefing document used to brief the RA, including a separate attachment in chart form that describes the status of each TMDL, as well as our background summary email below.

Happy to follow-up before or after your call with Chris.  
Thanks,  
John

-----

**From:** Goodin, John  
**Sent:** Thursday, May 17, 2018 6:42 PM  
**To:** Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Cc:** Campbell, Ann <[Campbell.Ann@epa.gov](mailto:Campbell.Ann@epa.gov)>; Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>; Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)>  
**Subject:** Deschutes Update

DELIBERATIVE                      DRAFT

Dave et al.— the following is some updated info on the Deschutes TMDLs and a recommendation on how to engage you for input prior to Region 10 action on the TMDLs by our June 29 deadline.

The court denied our recent motion to stay the case until June 29. OGC is considering options while the Region continues to work on the TMDLs. You previously indicated that you supported our general direction in the case, however, you were interested in the RA's position on potential TMDL disapprovals well before the actual decision is made. Chris H. will be briefed Monday and we'll get this feedback to you immediately thereafter. I also spoke to the R10 Water Division Director and indicated that you'd likely also be interested in the rationale of what TMDLs were candidates for approval, for approval with minor rework, and for disapproval. We'll work with the Region to provide this information in an efficient format. With the RA's views and background info in hand next week, we would be available to brief you or provide the info to you for your review. Recommend that you could then have a call with Chris before the end of May.

## Ex. 5 Deliberative Process (DP)

Let me know if we can do anything further.  
Thanks,  
John

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### Background

The Deschutes River, Percival Creek, and Budd Inlet Tributaries (Phase 1) TMDL study area is located in south Puget in Thurston and Lewis Counties, Washington. The Washington Department of Ecology submitted the final Phase 1 Deschutes TMDL to EPA for approval on December 17, 2015. That document addresses a total of 73 waterbody-pollutant combinations, involving temperature, dissolved oxygen [DO], pH, fecal coliform, and fine sediment impairments.

### Litigation

On September 6, 2017, Northwest Environmental Advocates (NWEA) filed a complaint against EPA alleging violation of section 303(d)(2) of the Clean Water Act (CWA) for failure to act on the Deschutes

River TMDL submission. Section 303(d)(2) requires EPA to either approve or disapprove a state's TMDL submission within 30 days of submittal.

As part of the ongoing litigation, EPA has stated in briefs that we will act on the Deschutes TMDL by June 29, 2018. The judge has denied EPA's motion to stay the case until June 29, but has not yet ruled on the plaintiff's motion for summary judgment, and recommended a consent decree or stipulated entry of judgment to ensure EPA action on the TMDL. OGC is reviewing options while the Region continues work on the TMDL decision.

#### Current Status

The CWA requires EPA to either approve or disapprove state-submitted TMDLs, and if we disapprove, we are required to develop a replacement TMDL within 30 days.

#### **Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

<05.21.2018 Deschutes R10 ORA Briefing.docx>

<Enclosure\_ORA 5-21 briefing.docx>

Message

**From:** Opalski, Dan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8B5ED6410D934BF699A008A252791A55-OPALSKI, DAN]  
**Sent:** 4/11/2018 4:03:50 PM  
**To:** Croxton, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ca7b9940863640d5b96f4295ea3c9641-Croxton, Dave]  
**CC:** Chung, Angela [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b3e49fcb1ad46f1bdbe92ebb4936350-Chung, Angela]  
**Subject:** Fwd: feedback from Dave Ross re: Deschutes TMDLs

You may be aware that I received a call from Tom yesterday. I can share more on that later. This email follows up on part of that call.

**Ex. 5 Deliberative Process (DP)**

We may have a tough time getting sit-down time with Chris due to his schedule, so could you please prepare a summary of our current thinking on the TMDLs and our proposed action? I thinking no more than two pages. If we can get that in front of Chris we can then set up a call for him with Dave Ross.

Sent from my iPhone

Begin forwarded message:

**From:** "Wall, Tom" <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>  
**Date:** April 10, 2018 at 2:50:39 PM PDT  
**To:** "Opalski, Dan" <[Opalski.Dan@epa.gov](mailto:Opalski.Dan@epa.gov)>  
**Cc:** "Goodin, John" <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>, "Connors, Sandra" <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)>, "Havard, James" <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>  
**Subject:** feedback from Dave Ross re: Deschutes TMDLs

Hi Dan – following up on our conversation, see highlighted text. We'll be happy to work with you to help tee this up on the timeline that's needed. Thank you,

Tom Wall, Director  
Watershed Restoration, Assessment and Protection Division  
Office of Wetlands, Oceans and Watersheds  
U.S. EPA  
[Wall.tom@epa.gov](mailto:Wall.tom@epa.gov)  
202/564-4179

**From:** Ross, David P  
**Sent:** Thursday, March 22, 2018 4:17 PM  
**To:** Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)>  
**Cc:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>; Best-Wong, Benita <[Best-Wong.Benita@epa.gov](mailto:Best-Wong.Benita@epa.gov)>; Campbell, Ann <[Campbell.Ann@epa.gov](mailto:Campbell.Ann@epa.gov)>; Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>  
**Subject:** Re: Request for Input on Litigation Stays for Two TMDL-Related Matters

Hi Sandra,

First question. Is the James River case

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

Regarding the Deschutes River matter,

**Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

I will weigh in on the James River matter after you answer my question above. Thanks.

Dave

Sent from my iPad

On Mar 21, 2018, at 7:14 PM, Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)> wrote:

DELIBERATIVE

Dave - We recommend your support for the proposed paths identified below in litigation related to the Chesapeake Bay (CB) TMDLs and the Deschutes River TMDLs. We would be happy to provide additional background or briefings as desired.

CB TMDL:

**Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

## **Ex. 5 Deliberative Process (DP)**

Deschutes River:

**Ex. 5 Attorney Client (AC)**

## **Ex. 5 Attorney Client (AC)**

If you are comfortable with these approaches, we will convey that to OGC.

Thanks,

*Sandra*

---

Sandra L. Connors  
Deputy Director

Office of Wetlands, Oceans, and Watersheds  
US Environmental Protection Agency, MC 4501T  
1200 Pennsylvania Avenue, WJCW 7130A  
Washington, DC 20460  
(202)564-4231

[connors.sandra@epa.gov](mailto:connors.sandra@epa.gov)

**From:** [Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)  
**Date:** March 9, 2018 at 11:55:24 AM CST  
**To:** [ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)  
**Cc:** Lee Forsgren <[forsgren.lee@epa.gov](mailto:forsgren.lee@epa.gov)>, Tom Wall <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>, [Havard.James@epa.gov](mailto:Havard.James@epa.gov)  
**Subject:** **FYI: Deschutes TMDL Joint Status Report Filing Today**

DELIBERATE

Dave— As mentioned at staff meeting Monday, today DOJ and plaintiff are filing a joint status report in Northwest Environmental Advocates v EPA, USDC, W.D. of Washington. This case alleges EPA failed to carry out its nondiscretionary duty to approve or disapprove the Deschutes River TMDLs within thirty days after submission by the State. The TMDL submission by the State involves 73 water segments and 5 pollutants, and was submitted in 2015 and supplemented in 2017.

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

Happy to discuss the TMDL timing issue as we move forward.

Thanks  
John

Sent from my iPhone





## Appointment

---

**From:** Hodgkiss, Miranda [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9D441DDB44AC4ED486058D2C2690B977-HODGKISS, MIRANDA]  
**Sent:** 4/18/2018 9:32:48 PM  
**To:** Hodgkiss, Miranda [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9d441ddb44ac4ed486058d2c2690b977-Hodgkiss, Miranda]; Mann, Laurie [mann.laurie@epa.gov]; Croxton, David [Croxton.David@epa.gov]; Brown, Leah [Brown.Leah@epa.gov]; Zell, Christopher [zell.christopher@epa.gov]  
**CC:** Steiner-Riley, Cara [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bef7d04f2e64e4b8b90235a30cc7109-Steiner-Riley, Cara]  
**Subject:** Deschutes Decision Memo  
**Attachments:** Background Info for 4-27 Deschutes Decision Memo mtg.docx  
**Location:** R10Sea-Room-19Columbia/R10-Rooms-Service-Center; R10Sea-ConfLineMM Ex. 6 Personal Privacy (PP)  
**Start:** 4/27/2018 6:30:00 PM  
**End:** 4/27/2018 7:30:00 PM  
**Show Time As:** Tentative

Hello – I've put together some background info for you all to take a look at prior to the meeting next Friday. I've tried to summarize the main outstanding issues that I think will benefit from a group discussion. At some point early next week, I will share out a One Drive Folder with a cleaned up version of the decision memo, so you can have that for reference as well. Thanks for all of your help so far!

### Proposed Agenda:

1. Go over changes made based on feedback received (5 min)
2. Outstanding issues/questions (45 min)
3. Next steps – what is our strategy for briefing this up? (10 min)

---

Hi everyone,

I plan to take a look at the comments received on the decision memo, and tee up the outstanding issues for us to discuss. I will compile a list of topics before the meeting and send them out. Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

Thanks,

Miranda

Message

---

**From:** Brown, Leah [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B8E396F718A74D0BB01F1E35B7319572-RINDNER, LE]  
**Sent:** 6/15/2018 3:24:18 PM  
**To:** Steiner-Riley, Cara [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bef7d04f2e64e4b8b90235a30cc7109-Steiner-Riley, Cara]  
**Subject:** FW: Deschutes

FYI.

Leah Brown  
Assistant Regional Counsel  
(206) 553-8694  
[brown.leah@epa.gov](mailto:brown.leah@epa.gov)

---

**From:** Havard, James  
**Sent:** Friday, June 15, 2018 5:00 AM  
**To:** Hodgkiss, Miranda <[Hodgkiss.Miranda@epa.gov](mailto:Hodgkiss.Miranda@epa.gov)>; Brown, Leah <[Brown.Leah@epa.gov](mailto:Brown.Leah@epa.gov)>; Curtin, James <[curtin.james@epa.gov](mailto:curtin.james@epa.gov)>; Hunter, Christopher <[Hunter.Christopher@epa.gov](mailto:Hunter.Christopher@epa.gov)>; Lewicki, Chris <[Lewicki.Chris@epa.gov](mailto:Lewicki.Chris@epa.gov)>  
**Cc:** Croxton, David <[Croxton.David@epa.gov](mailto:Croxton.David@epa.gov)>; Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>  
**Subject:** RE: Deschutes

Materials and have been provided to Dave R but I don't know if they've been reviewed.

---

**From:** Hodgkiss, Miranda  
**Sent:** Thursday, June 14, 2018 6:05 PM  
**To:** Brown, Leah <[Brown.Leah@epa.gov](mailto:Brown.Leah@epa.gov)>; Curtin, James <[curtin.james@epa.gov](mailto:curtin.james@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>; Hunter, Christopher <[Hunter.Christopher@epa.gov](mailto:Hunter.Christopher@epa.gov)>; Lewicki, Chris <[Lewicki.Chris@epa.gov](mailto:Lewicki.Chris@epa.gov)>  
**Cc:** [sonya.shea@usdoj.gov](mailto:sonya.shea@usdoj.gov); Croxton, David <[Croxton.David@epa.gov](mailto:Croxton.David@epa.gov)>  
**Subject:** RE: Deschutes

Update after talking with Dave C this afternoon: Dan did meet with the RA, but it seems like the RA has not touched based with Dave Ross yet. I think he is wanting to talk with the state before he does so.

Jim H – Do you know if Ross has reviewed the briefing materials?

Miranda Hodgkiss  
Office of Water and Watersheds  
U.S. EPA Region 10  
(206) 553-0692  
[hodgkiss.miranda@epa.gov](mailto:hodgkiss.miranda@epa.gov)

---

**From:** Hodgkiss, Miranda  
**Sent:** Thursday, June 14, 2018 9:19 AM  
**To:** Brown, Leah <[Brown.Leah@epa.gov](mailto:Brown.Leah@epa.gov)>; Curtin, James <[curtin.james@epa.gov](mailto:curtin.james@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>; Hunter, Christopher <[Hunter.Christopher@epa.gov](mailto:Hunter.Christopher@epa.gov)>; Lewicki, Chris <[Lewicki.Chris@epa.gov](mailto:Lewicki.Chris@epa.gov)>  
**Cc:** [sonya.shea@usdoj.gov](mailto:sonya.shea@usdoj.gov); Croxton, David <[Croxton.David@epa.gov](mailto:Croxton.David@epa.gov)>  
**Subject:** RE: Deschutes

Thanks for the update, Jim. No, I haven't heard back from Dan on his convo with the RA. We can check in with him today. I'm cc'ing Dave C. in case he has anything to add.

Miranda Hodgkiss  
Office of Water and Watersheds  
U.S. EPA Region 10  
(206) 553-0692  
[hodgkiss.miranda@epa.gov](mailto:hodgkiss.miranda@epa.gov)

---

**From:** Brown, Leah  
**Sent:** Thursday, June 14, 2018 9:04 AM  
**To:** Curtin, James <[curtin.james@epa.gov](mailto:curtin.james@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>; Hunter, Christopher <[Hunter.Christopher@epa.gov](mailto:Hunter.Christopher@epa.gov)>; Lewicki, Chris <[Lewicki.Chris@epa.gov](mailto:Lewicki.Chris@epa.gov)>; Hodgkiss, Miranda <[Hodgkiss.Miranda@epa.gov](mailto:Hodgkiss.Miranda@epa.gov)>  
**Cc:** [sonya.shea@usdoj.gov](mailto:sonya.shea@usdoj.gov)  
**Subject:** RE: Deschutes

Thanks, Jim. That's consistent with my understanding. I think Dan was planning to ask the RA whether he'd touched base with Dave Ross. Miranda, did you ever hear back from Dan on that?

Leah Brown  
Assistant Regional Counsel  
(206) 553-8694  
[brown.leah@epa.gov](mailto:brown.leah@epa.gov)

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**From:** Curtin, James  
**Sent:** Thursday, June 14, 2018 8:42 AM  
**To:** Brown, Leah <[Brown.Leah@epa.gov](mailto:Brown.Leah@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>; Hunter, Christopher <[Hunter.Christopher@epa.gov](mailto:Hunter.Christopher@epa.gov)>; Lewicki, Chris <[Lewicki.Chris@epa.gov](mailto:Lewicki.Chris@epa.gov)>  
**Cc:** [sonya.shea@usdoj.gov](mailto:sonya.shea@usdoj.gov)  
**Subject:** Deschutes

This morning, I gave David Fotouhi a quick update. Ex. 5 Attorney Client (AC)

# Ex. 5 Attorney Client (AC)

*Jim*

Jim Curtin  
USEPA Office of General Counsel  
Water Law Office  
202-564-5482  
William Jefferson Clinton North Rm. 7451

## Appointment

---

**From:** Erikson, Linda [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=216310F1976841B78EDC0F6E41FABB90-ERIKSON, LI]  
**Sent:** 5/17/2018 10:27:42 PM  
**To:** Hladick, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b82d04419c42423a97bd7624a3a09908-Hladick, Ch]; Opalski, Dan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8b5ed6410d934bf699a008a252791a55-Opalski, Dan]; Brown, Leah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b8e396f718a74d0bb01f1e35b7319572-Rindner, Le]; Croxton, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ca7b9940863640d5b96f4295ea3c9641-Croxton, Dave]; Mann, Laurie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=91d9977275924e7b80a6751941c1c3b7-Mann, Laurie]; Hodgkiss, Miranda [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9d441ddb44ac4ed486058d2c2690b977-Hodgkiss, Miranda]  
**CC:** Steiner-Riley, Cara [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0bef7d04f2e64e4b8b90235a30cc7109-Steiner-Riley, Cara]; Stern, Allyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2e2d6f5df08d4e9abbff2c0880407775-Stern, Allyn]; Chung, Angela [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b3e49fcba1ad46f1bdbe92ebb4936350-Chung, Angela]; Ross, David P [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=119cd8b52dd14305a84863124ad6d8a6-Ross, David]; Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Wall, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=128011ac603c4d1a82301ada1bdfd733-Twall]; Lewicki, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7688d5b97aa94ba6af2f38984d479b56-CLewicki]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Curtin, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=728048227d024e0cb67932883007a4f9-JCURTIN]  
**Subject:** Deschutes TMDL Brief for the RA  
**Attachments:** Deschutes TMDL Briefing with RA  
**Location:** ET Conference Room, Conf Line: Ex. 6 Personal Privacy (PP) **Code:** Ex. 6 Personal Privacy (PP)  
**Start:** 5/21/2018 5:00:00 PM  
**End:** 5/21/2018 6:00:00 PM  
**Show Time As:** Tentative



## Region 10 Briefing Paper for the Office of the Regional Administrator

**MEETING/EVENT TITLE:** Deschutes Total Maximum Daily Load (TMDL) Action

**MEETING DATE:** May 21, 2018

**LOCATION:** ET Conference Room

**PREPARED BY:** Miranda Hodgkiss

**DATE:** May 17, 2018

**ATTENDEES:** Region 10: Dan Opalski, Laurie Mann, Miranda Hodgkiss, Leah Brown

Headquarters (optional): David Ross, John Goodin, Tom Wall, Jim Havard, Jim Curtin, Chris Lewicki

**EXTERNAL PARTICIPANTS:** N/A

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### I. REQUESTING OFFICE

R10 OWW – Watershed Unit

### II. TIMING

EPA has informed the Court that it intends to approve and/or disapprove the Deschutes Watershed TMDL by June 29, 2018. We anticipate the Court will enter an Order that we do so.

### III. PURPOSE

We are holding this briefing to inform the RA of our proposed action on the Deschutes Watershed TMDL. The draft decision document includes disapprovals of TMDLs for waters impaired by multiple pollutants submitted by Washington Department of Ecology (Ecology). The draft decision document also includes approvals of some of the state-submitted TMDLs. The purpose of this briefing is to provide the RA with sufficient information about the Deschutes TMDL and resulting litigation to make an approval/disapproval decision and coordinate with counterparts at Headquarters.

### IV. BACKGROUND/HISTORY

#### Timeline

<i>December 17, 2015</i>	Ecology submitted the final Deschutes TMDL to EPA for approval.
<i>July 17, 2017</i>	Ecology submitted supplemental TMDL information, including new bacteria loads and a temperature equation.
<i>September 6, 2017</i>	Northwest Environmental Advocates (NWEA) filed a complaint against EPA alleging violation of section 303(d)(2) of the Clean Water Act (CWA) for failure to act on the TMDL submission within the statutorily required 30-day timeframe.
<i>June 29, 2018</i>	Date by which EPA has said it will take action on the Deschutes TMDLs.

#### Background

The Washington Department of Ecology submitted the final Deschutes TMDL to EPA for approval on December 17, 2015. The TMDL addresses 73 waterbody-pollutant pairs for five pollutants – fecal coliform, temperature, dissolved oxygen (DO), pH, and fine sediment. EPA must approve or disapprove each waterbody-pollutant pair – essentially requiring 73 individual decisions to either approve or disapprove loadings developed for a waterbody-pollutant pair. Region 10 OWW and ORC have been consulting with counterparts at Headquarters in the Watershed Branch and Office of General Counsel (OGC) regarding the Agency's planned action on this TMDL.

This TMDL is the first phase of a multi-phase process to address water quality impairments for waters flowing into south Puget Sound. The watershed addressed in this phase includes the Deschutes River and its tributaries, Percival Creek, and the tributaries to Budd Inlet. The Deschutes River originates in heavily forested regions of the Bald Hills, then flows northward into Capitol Lake (in Olympia), then into Budd Inlet (south Puget Sound). Capitol Lake was formed in 1951 as an impoundment of the Deschutes estuary to create a reflecting pool for the State Capitol Building. The TMDL watershed is situated within the boundaries of Thurston and Lewis Counties, Washington, and includes the cities or towns of Olympia, Lacey, Tumwater, and Rainier. Ecology has stated that a second phase of the TMDL to address the marine segments of Budd Inlet, impaired for DO and bacteria, is planned for completion in 2021. No plans have been made by Ecology to develop a TMDL for Capitol Lake, which is impaired for total phosphorus and bacteria.

#### Litigation

On September 6, 2017, NWEA filed a complaint against EPA alleging violation of section 303(d)(2) of the CWA for failure to act on the Deschutes River TMDL submission. Section 303(d)(2) requires EPA to either approve or disapprove a state's TMDL submission within 30 days of submittal. EPA has represented in recent court filings that it will complete its action no later than June 29, 2018, and it is likely that the court will soon order EPA to complete its action by this date.

#### V. KEY ISSUES

## Ex. 5 Deliberative Process (DP)

Once EPA disapproves a TMDL, CWA section 303(d)(2) requires the Agency to develop a new TMDL within 30 days. Thus, for the waterbody-pollutant pairs we disapprove, we will need to develop revised TMDLs that remedy our concerns.

## Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

**Ex. 5 Deliberative Process (DP)** The primary deficiencies we have found with the TMDL submittal are summarized below:

- Incomplete TMDL submittals: The State did not provide critical TMDL components (e.g., loading capacity, wasteload allocations, and load allocations) for some waterbody-pollutant pairs, as required by 40 CFR § 130.2 and 40 CFR § 130.7.
- Public notice requirements not met: The supplemental 2017 submittal did not undergo public review. Since it contains new loading calculations for bacteria, we are concerned these waterbody-pollutant

pairs do not meet public review requirements at 40 CFR § 130.7(c)(1)(ii). We find these TMDLs otherwise approvable.

- Downstream uses not protected: Washington's water quality standards at WAC 173-201A-260(3)(b-d) require that downstream uses be protected. Some waterbody-pollutant pair TMDL calculations allow pollutant loadings that are not protective of downstream waters. Thus, they are not consistent with requirements at 40 CFR § 130.7(c)(1) that TMDLs be established at levels necessary to attain and maintain the applicable water quality standards.
- TMDL target not protective of water quality standards: Some waterbody-pollutant pair TMDL calculations do not provide a clear linkage analysis to demonstrate that the water quality target chosen to develop the loading capacity is protective of State water quality standards. Thus, they are not consistent with requirements at 40 CFR § 130.7(c)(1) that TMDLs be established at levels necessary to attain and maintain the applicable water quality standards.

## Ex. 5 Deliberative Process (DP)

### VII. ROLL-OUT / COMMUNICATIONS PLAN

Other than notifying the State, NWEA, and the court of our final action, a communication plan has not been developed, nor is one anticipated to be necessary.

### VIII. NEXT STEPS / UPCOMING DEADLINES

The Region has developed an anticipated schedule for meeting the June 29<sup>th</sup> deadline. This was put forth to the court in a declaration filed on April 4, 2018, by David Croxton, the Watershed Unit manager. The following steps represent our planned course for developing decision documents and briefing management:

- *April 23 – May 18*: R10 OWW, ORC, OGC and Office of Water (Headquarters) review draft decision document.
- *May 28 – June 15*: R10 Watershed Unit shares draft decision document with RA, Office of Water AA, and OGC for senior management review.
- *June 18 – June 28*: R10 Watershed Unit finalizes review.
- *June 29*: Agency finalizes Deschutes TMDL decision document and takes final action on TMDL.



**Sent:** 4/11/2018 9:29:03 PM  
**To:** Opalski, Dan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8b5ed6410d934bf699a008a252791a55-Opalski, Dan]  
**CC:** Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Connors, Sandra [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cc4f8f838be74de797ba9f894a0bc7b5-SCONNORS]; Havard, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9350676809e8403994f1dfc2b7bfdcfe-JHAVARD]; Chung, Angela [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b3e49fcb1ad46f1bdbe92ebb4936350-Chung, Angela]; Croxton, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ca7b9940863640d5b96f4295ea3c9641-Croxton, Dave]  
**Subject:** RE: feedback from Dave Ross re: Deschutes TMDLs

Thanks Dan, Understand your folks are working on a briefing package for you and the RA. When you think it's ready, we could share the paper with Dave Ross and any feedback you get from the RA. We'll be sure to let him know we've been working with you. Dave could call Chris if he has issues he wants to discuss?

## Ex. 5 Deliberative Process (DP)

Sound good?

Tom Wall, Director  
Watershed Restoration, Assessment and Protection Division  
Office of Wetlands, Oceans and Watersheds  
U.S. EPA  
[Wall.tom@epa.gov](mailto:Wall.tom@epa.gov)  
202/564-4179

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**From:** Opalski, Dan  
**Sent:** Wednesday, April 11, 2018 12:11 PM  
**To:** Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>  
**Cc:** Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>; Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>; Chung, Angela <[Chung.Angela@epa.gov](mailto:Chung.Angela@epa.gov)>; Croxton, David <[Croxton.David@epa.gov](mailto:Croxton.David@epa.gov)>  
**Subject:** Re: feedback from Dave Ross re: Deschutes TMDLs

Tom — Thanks for the call and this follow-up. As in most of these matters, I think it also is important that Dave is hearing from HQ folks given the considerable amount of time some of the staff have invested with us already. (The note to Dave refers to our intended action, but does not provide any indication of review or involvement by HQ staff.) If we need to talk more before Chris and Dave communicate, especially about potentially differences regarding the quality/approvability of the TMDLs, please let me know. We will proceed in the meantime to get Chris more info on the details — he already is aware of the status in general. Thanks again.

Sent from my iPhone

On Apr 10, 2018, at 2:50 PM, Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)> wrote:

Hi Dan – following up on our conversation, see highlighted text. We'll be happy to work with you to help tee this up on the timeline that's needed. Thank you,

Tom Wall, Director  
Watershed Restoration, Assessment and Protection Division  
Office of Wetlands, Oceans and Watersheds  
U.S. EPA  
[Wall.tom@epa.gov](mailto:Wall.tom@epa.gov)  
202/564-4179

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**From:** Ross, David P  
**Sent:** Thursday, March 22, 2018 4:17 PM  
**To:** Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)>  
**Cc:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>; Best-Wong, Benita <[Best-Wong.Benita@epa.gov](mailto:Best-Wong.Benita@epa.gov)>;  
Campbell, Ann <[Campbell.Ann@epa.gov](mailto:Campbell.Ann@epa.gov)>; Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>  
**Subject:** Re: Request for Input on Litigation Stays for Two TMDL-Related Matters

Hi Sandra,

First question. Is the James River case **Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

Regarding the Deschutes River matter, **Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

I will weigh in on the James River matter after you answer my question above. Thanks.

Dave

Sent from my iPad

On Mar 21, 2018, at 7:14 PM, Connors, Sandra <[Connors.Sandra@epa.gov](mailto:Connors.Sandra@epa.gov)> wrote:

DELIBERATIVE

Dave - We recommend your support for the proposed paths identified below in litigation related to the Chesapeake Bay (CB) TMDLs and the Deschutes River TMDLs. We would be happy to provide additional background or briefings as desired.

CB TMDL: **Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

## Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

Deschutes River:

### Ex. 5 Attorney Client (AC)

## Ex. 5 Attorney Client (AC)

If you are comfortable with these approaches, we will convey that to OGC.

Thanks,

*Sandra*

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Sandra L. Connors  
Deputy Director

Office of Wetlands, Oceans, and Watersheds  
US Environmental Protection Agency, MC 4501T  
1200 Pennsylvania Avenue, WJCW 7130A  
Washington, DC 20460  
(202)564-4231

[connors.sandra@epa.gov](mailto:connors.sandra@epa.gov)

**From:** [Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)

**Date:** March 9, 2018 at 11:55:24 AM CST

**To:** [ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)

**Cc:** Lee Forsgren <[forsgren.lee@epa.gov](mailto:forsgren.lee@epa.gov)>, Tom Wall <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>, [Havard.James@epa.gov](mailto:Havard.James@epa.gov)

**Subject:** FYI: Deschutes TMDL Joint Status Report Filing Today

DELIBERATE

Dave— As mentioned at staff meeting Monday, today DOJ and plaintiff are filing a joint status report in Northwest Environmental Advocates v

EPA, USDC, W.D. of Washington. This case alleges EPA failed to carry out its nondiscretionary duty to approve or disapprove the Deschutes River TMDLs within thirty days after submission by the State. The TMDL submission by the State involves 73 water segments and 5 pollutants, and was submitted in 2015 and supplemented in 2017.

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

Happy to discuss the TMDL timing issue as we move forward.

Thanks  
John

Sent from my iPhone

Message

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**From:** Weiler, Katherine [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B2CA8131DB564DAA8CCC9639F70F6235-KWEILER]  
**Sent:** 5/15/2018 2:56:33 PM  
**To:** Wall, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=128011ac603c4d1a82301ada1bdfd733-Twall]  
**Subject:** RE: OWOW staff summary - revision toDeschutes point - change "make a decision" to "stay the case"

Thanks Tom! I will update bullets. ☺

---

**From:** Wall, Tom  
**Sent:** Tuesday, May 15, 2018 10:43 AM  
**To:** Weiler, Katherine <Weiler.Katherine@epa.gov>  
**Subject:** OWOW staff summary - revision toDeschutes point - change "make a decision" to "stay the case"

Sent from my iPhone

Begin forwarded message:

**From:** "Havard, James" <Havard.James@epa.gov>  
**Date:** May 14, 2018 at 11:01:14 AM EDT  
**To:** "Yusuf, Istanbul" <Yusuf.Istanbul@epa.gov>, "Holdsworth, Susan" <Holdsworth.Susan@epa.gov>, "Hall, Lynda" <Hall.Lynda@epa.gov>, "Young, Dwane" <Young.Dwane@epa.gov>, "Weiler, Katherine" <Weiler.Katherine@epa.gov>  
**Cc:** "Wall, Tom" <Wall.Tom@epa.gov>, "Lewicki, Chris" <Lewicki.Chris@epa.gov>, "Santell, Stephanie" <Santell.Stephanie@epa.gov>, "Hunter, Christopher" <Hunter.Christopher@epa.gov>, "Monschein, Eric" <Monschein.Eric@epa.gov>  
**Subject:** RE: Talking Points from the Watershed Branch

Here are two talking points from the WB. Thanks to Stephanie, Chris H and Chris L for preparing these (in coordination with OGC).

Jim

#### **Deschutes TMDL Litigation**

- On May 4, 2018 the judge in NWEA's litigation against EPA in the Deschutes TMDL case denied EPA's motion to stay the case until June 29, 2018 (EPA had requested the stay to allow EPA time to complete its action).
- The judge pointed out that EPA has had over 2 years to take action, and that "a negotiated consent decree or stipulated entry of judgment would provide plaintiff some assurance of timely agency action or, at the very least, an enforcement mechanism if the agency again fails to meet its deadline."
- Although the court has not ruled on NWEA's request for summary judgment yet, OGC is discussing possible next steps and will coordinate with OW as needed.

#### Background

- R10 staff will be recommending some disapprovals to the RA.

- The Region knows that Dave would like to talk to the RA if the Region intends to disapprove some of the TMDLs

#### **WV Constructive Submission TMDL Litigation**

- Oral argument took place before the Fourth Circuit Court of Appeals in Richmond, Va. on Tuesday, May 8th in the WV ionic toxicity “constructive submission” TMDL case. The audio recording can be found here: <http://www.ca4.uscourts.gov/oral-argument/listen-to-oral-arguments>

## **Ex. 5 Deliberative Process (DP)**

#### Background

- On June 13, 2017, EPA responded to a district court’s order to “approve” or “disapprove” the constructive submission of “no” total maximum daily loads (TMDLs) for 573 biologically-impaired waters in West Virginia. EPA approved such constructive submission for 106 waters with TMDLs that had already been established to address all causes of biological impairment or for waters no longer impaired, and conditionally approved the remaining 467 waters based on a MOA between EPA and WVDEP. The MOA establishes a schedule by which WVDEP will develop and submit TMDLs to EPA on a regular basis by June 2026 to ensure steady progress with addressing all causes of biological impairments, including ionic toxicity. R3 believes WV is on track to complete the TMDLs by June 2026 pursuant to the 2017 EPA-WV MOU.

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**From:** Yusuf, Istanbul

**Sent:** Monday, May 14, 2018 10:52 AM

**To:** Holdsworth, Susan <[Holdsworth.Susan@epa.gov](mailto:Holdsworth.Susan@epa.gov)>; Hall, Lynda <[Hall.Lynda@epa.gov](mailto:Hall.Lynda@epa.gov)>; Havard, James <[Havard.James@epa.gov](mailto:Havard.James@epa.gov)>; Young, Dwane <[Young.Dwane@epa.gov](mailto:Young.Dwane@epa.gov)>

**Cc:** Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>

**Subject:** FW: Talking Points

Any talking points for OW staff meeting?

---

**From:** Weiler, Katherine

**Sent:** Monday, May 14, 2018 10:38 AM

**To:** Wall, Tom <[Wall.Tom@epa.gov](mailto:Wall.Tom@epa.gov)>; Yusuf, Istanbul <[Yusuf.Istanbul@epa.gov](mailto:Yusuf.Istanbul@epa.gov)>

**Subject:** Talking Points

Hi Tom/Istie,

I hope you both had a great weekend! Istie, Happy Belated Mother’s Day!

Did you send talking points on Thursday or Friday? I can’t seem to find them in my inbox.

Thanks!

Katherine

Katherine Weiler | U.S. Environmental Protection Agency | Office of Wetlands, Oceans, and Watersheds  
Special Assistant (Detail) | (202) 566-1280 | [weiler.katherine@epa.gov](mailto:weiler.katherine@epa.gov)

